Supreme Court, U.S.
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NO. _____

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1994

MANSEL J. CARRIERE,
JANELL L. CARRIERE and
AETNA CASUALTY & SURETY COMPANY

Petitioners

versus

GREY WOLF DRILLING COMPANY and
PETROLEUM MARINE INS. AGENCY, INC.,

Respondents

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR
THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the Fifth Circuit Court of Appeals erred in not recognizing the applicability of Texas law in accordance with Louisiana's conflict of laws, where the overwhelming majority of contacts and interests in the case are in Texas.

LIST OF ALL PARTIES TO THE PROCEEDING

Mansel J. Carriere and Janell L. Carriere, plaintiffs

Aetna Casualty & Surety Company, intervenor-plaintiff

Grey Wolf Drilling Company, defendant-respondent

Petroleum Marine Insurance Agency, Inc., as agent on behalf of certain underwriters of Lloyd's London, England, and certain insurance companies, defendant-respondent

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PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Mansel J. Carriere, Janell L. Carriere and Aetna Casualty & Surety

Company, the petitioners herein, pray for the issuance of a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above entitled case on December 9, 1994.

OPINIONS AND JUDGMENTS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit sought for review, unpublished, but printed in Appendix A of this Petition on pages A-1 through A-34, affirmed the district court's judgment granting summary judgment in favor of Grey Wolf Drilling Company and Petroleum Marine Insurance Agency, Inc. A timely Petition for Rehearing, printed in Appendix A on page A-72 was denied on January 17, 1995.

The judgment of the United States District Court for the Western District

of Louisiana, unpublished, but printed in Appendix A of this Petition on pages A-35 through A-37, entered on January 13, 1994, granted summary judgment for Grey Wolf Drilling Company and Petroleum Marine Insurance Agency, Inc.

JURISDICTION

Jurisdiction of the United States Supreme Court is invoked pursuant to 28 U.S.C. § 2101(c), as well as 28 U.S.C. § 1254. The judgment of the United States Court of Appeals for the Fifth Circuit was entered on December 9, 1994 and a timely Petition for Rehearing was denied on January 17, 1995.

STATUTES INVOLVED

La. Civil Code Article 14

La. Civil Code Article 3515

La. Civil Code Article 3542

La. Civil Code Article 3543

La. Civil Code Article 3544

La. Civil Code Article 3545

La. Civil Code Article 3546

La. Civil Code Article 3547

La. Civil Code Article 3548

La. Revised Statute 23:1032

La. Revised Statute 23:1101

La. Revised Statute 23:1102

1991 La. Acts No. 923 § 1

1991 La. Acts No. 923 § 4

STATEMENT OF THE CASE

Mansel J. Carriere and his wife, Janell L. Carriere, filed this tort action against Grey Wolf Drilling Company and its insurer, Petroleum Marine Insurance Agency, Inc., in the United States District Court for the Western District of Louisiana on June 17, 1992. The suit arose out of injuries Mansel Carriere sustained in Texas while working

for his employer, Chandeleur Energy Corporation, a Texas corporation.

Union Pacific Resources Company (UPRC), a Texas corporation, contracted with Grey Wolf Drilling Company, also a Texas corporation, to drill a well near Gonzales, Texas. Grey Wolf chose not to perform the work itself and entered into an agreement with Chandeleur Energy Corporation, also a Texas corporation, to undertake the drilling work at the Texas site. Thereafter, Grey Wolf's sole participation in the arrangement was to supply the equipment, *i.e. drilling rig and appurtences,* to the drilling site. Grey Wolf did not have any employees at the rig. Chandeleur paid and controlled its employees. Moreover, Grey Wolf did not exercise any control over Chandeleur's employees.

Mansel Carriere was hired in

Louisiana by Chandeleur to work at the drilling site in Texas. While in the course and scope of his employment, he was injured when the tongs he was using failed to "bite" the upper joint of the pipe. As a result, the tongs swung around the pipe when the driller engaged the cathead. Mr. Carriere had both hands on the tongs when they swung around the pipe, throwing him backwards injuring his neck and back, among other injuries, necessitating extensive back surgery.

Mr. Carriere has received workers' compensation benefits from his employer, Chandeleur, through Aetna Casualty & Surety Company, as a result of his injuries. Aetna Casualty & Surety Company intervened in the tort suit asserting its subrogation rights.

Mansel Carriere and Janell Carriere's third party tort action was

brought against Grey Wolf as owners of the allegedly defective tongs.

Grey Wolf Drilling Company and its insurer, Petroleum Marine Insurance Agency, Inc., filed a Motion for Summary Judgment claiming immunity from this tort suit based on the statutory employer doctrine found in Louisiana's workers' compensation laws. Because Mr. Carriere's accident occurred in Texas and his claim for the defective equipment is against a Texas corporation, plaintiffs and intervenor opposed the Motion for Summary Judgment urging the application of Texas' substantive tort law to this matter. Application of Texas' substantive tort law precludes the application of the Louisiana Statutory Employer Immunity Doctrine.

A hearing was held on the Motion for Summary Judgment before the Honorable

Judge Richard T. Haik, Sr. on December 16, 1993. The transcript of the proceeding before the Honorable Richard T. Haik, Sr. is included in Appendix A of this Petition on pages A-38 through A-71. The trial court granted the defendant's motion and judgment was entered on January 13, 1994.

REASONS FOR GRANTING THE WRIT

I. APPLICATION OF LOUISIANA'S WORKERS' COMPENSATION LAW (TORT IMMUNITY DOCTRINE) IS ERRONEOUS WHEN LOUISIANA CIVIL CODE ARTICLE 3544(2) SPECIFICALLY PROVIDES FOR THE APPLICATION OF TEXAS' TORT LAW.

A. TRUE CONFLICT OF LAW

Federal courts exercising diversity jurisdiction are to apply the conflicts of laws rules of the forum state. Klaxon Co. v. Stentor Elec. Mfg Co., Inc., 313 U.S. 487, 61 S.Ct. 1020, 85 L.Ed 1477 (1941). Thus, the lower courts are bound to apply the conflicts of laws principles of Louisiana since this matter was brought in the United Stated District Court for the Western District of Louisiana.

Jurisprudence in Louisiana provides that the court must first determine whether a "true conflict" exists warranting the application of the conflicts of laws principles. Sandefer

Oil & Gas v. AIG Oil Rig of Texas, Inc., 846 F.2d 319, 322 (5th Cir. 1988), rehearing denied (7/6/88); Farrell Construction Company v. Jefferson Parish, Louisiana, No. 86-4242, 1992 WL 210027 (E.D. La. August 20, 1992).

The Louisiana Supreme Court in Jagers vs. Royal Indemnity Company, 276 So.2d 309 (La. 1973), discussed the distinction between a "true conflict" and a "false conflict." The court concluded that Jagers involved a "false conflict" because both of the parties to the suit were residents of Louisiana, thus no real or true conflict existed because only a single state had an interest in the application of its law. The fact that the accident giving rise to the suit occurred in Mississippi did not give Mississippi the "interest" needed to warrant the application of its law to the

action.

To have a "true conflict", two or more states must have an interest in the application of its law to the suit. The facts of the present case meet this requirement. The plaintiffs are residents of Louisiana, thus Louisiana has an interest in compensating its residents for injuries. The alleged tortfeasor is a Texas corporation domiciled in Texas, thus Texas has an interest in applying its laws to protect its resident corporations. Consequently, this court is faced with a "true conflict" and must apply the conflicts of laws principles of Louisiana pursuant to Klaxon.

While Louisiana and Texas both have an interest in applying its law in this matter, Texas has the greater interest. The injury occurred in Texas as a result

of negligent conduct of a Texas corporation. Such conduct warrants the application of Texas law to prevent tortfeasors from acting negligently, thereby injuring innocent parties. Whether the plaintiffs are residents of Texas or another state, Texas has an interest in protecting innocent parties in their state from injury by a Texas tortfeasor. Furthermore, Louisiana has an interest in seeing that its residents are compensated, thereby mandating the application of Texas law, which allows a tort action against the defendant, Grey Wolf. The lower courts have held that Louisiana workers' compensation law should be applied to this tort action against Grey Wolf, which actually precludes the Carrieres from maintaining this tort action against Grey Wolf.

For the reasons discussed below the

Carrieres and Aetna disagree with the lower courts application of Louisiana workers' compensation law in this tort suit against Grey Wolf.

B. CONFLICT REQUIRES APPLICATION OF ARTICLE 3544(2).

A recent act of the Louisiana legislature, 1991 La. Acts No. 923 § 1, revised, amended and re-enacted the conflict of laws rules of Louisiana. Louisiana Civil Code Article 14 now states that "[u]nless otherwise expressly provided by the law of this state, cases having contacts with other states are governed by the law selected in accordance with the provisions of Book IV of this Code." Section four of La. Acts No. 923 provides that "[t]his Act shall become effective on January 1, 1992, and shall apply to all actions filed after that date." This Act and the articles

included in the newly-created Book IV of the Louisiana Civil Code apply to this present action since it was filed by plaintiffs on June 17, 1992, subsequent to the January 1, 1992 effective date. Articles 3542-3548 of Book IV of the Louisiana Civil Code specifically applies to delictual and quasi-delictual obligations. As a general rule, issues of delictual or quasi-delictual obligations are governed by the law of the state whose policies would be most seriously impaired if its law were not applied to those issues. La. Civ. Code Art. 3542. Succeeding Articles 3543-3546 are more specific and prevail over the general rule of Article 3542.

In particular, Louisiana Civil Code Article 3544 addresses the issue of loss distribution and financial protection as between an injured person and the

tortfeasor. Rules that provide immunity from suit are "rules of loss distribution and financial protection." Comment (a) to La. Civ. Code Art. 3542. Consequently, the issue as to whether or not Grey Wolf is immune from tort liability is controlled by the articles relating to loss distribution and financial protection.

Article 3544 states in pertinent part that:

> "Issues pertaining to loss distribution and financial protection are governed, as between a person injured by an offense or quasi-offense and the person who caused the injury, by the law designated in the following order:
>
> ...
>
> (2) If, at the time of the injury, the injured person and the person who

> caused the injury were domiciled in different states: (a) when both the injury and the conduct that caused it occurred in one of those states, by the law of that state..."

Mansel Carriere is domiciled in Louisiana and Grey Wolf is domiciled in Texas. Subsection (2) of Article 3544 is the applicable provision since Carriere and Grey Wolf were domiciled in different states at the time of Carriere's injury. Article 3544(2)(a) provides that when the injury and tortfeasor's conduct that caused the injury occurred in one of the states of domicile, then the law of that state governs, *i.e. law of Texas*.

C. JURISPRUDENCE INTERPRETING ARTICLE 3544

Very little case law exists on the interpretation of the recently enacted conflicts of laws provisions found in

Book IV, especially Article 3544. Two of Louisiana's courts of appeal have recently issued opinions discussing article 3544. The first opinion, Levy v. Jackson, 612 So.2d 894 (La. App. 4th Cir. 1993), applied Louisiana Civil Code Article 3544 to a conflict of law issue where the facts consisted of an accident occurring in Louisiana, but the parties were all residents of Alabama. Article 3544(1) provides that if, at the time of the injury, the injured person and the person who caused the injury were domiciled in the same state then the law of that state governs the issue of loss distribution and financial protection. Although the lawsuit by the Alabama plaintiff was against several parties, some of which were residents of Louisiana, the particular issue before the court was a motion for summary

judgment filed by the insurer of one of the drivers, who was a resident of Alabama. The Fourth Circuit specifically held "[a]fter consideration of the application, this court held that Alabama law was applicable to the resolution of the dispute between those litigants who were residents and domiciles of Alabama." Rehearing was requested and granted with the Fourth Circuit adhering to its original opinion that Alabama law was applicable. The Fourth Circuit did not hold that Alabama law governed the entire action, but that Alabama law governed the dispute between the litigants who were residents and domiciles of Alabama.

The second Louisiana opinion discussing article 3544 is Kennington vs. H. Blume Johnson, Inc., 632 So.2d. 883, No. 25,580-CA, (La. App. 2d Cir., 2/23/94). In Kennington, like the

present matter, a Louisiana worker brought an action against the owner of a Texas drilling rig to recover damages for injuries sustained while working on the rig in Texas. The difference between Kennington and the present matter is that the defendant in Kennington was a Louisiana corporation and the defendant in the present matter is a Texas corporation. The Court of Appeal for the Second Circuit correctly held that Louisiana law governed and not Texas law. In reaching its holding, the court applied article 3544(1) which provides that the law of Louisiana governs the issue of loss distribution and financial protection where the injured person and the person causing the injury were both

domiciled in the State of Louisiana.[1]

Although the second circuit relied on Article 3544, the facts of the case mandated that subsection (1) apply because both of the parties were

---

[1]The Louisiana Supreme Court granted writs in this matter, Kennington v. H. Blume Johnson, Inc., No. 94-C-0744, (La. July 1, 1994), 638 So.2d 1066, which was reversed and remanded for an issue other than the conflict of law issue. The question before the Louisiana Supreme Court was whether the trial court and the court of appeal properly concluded that the defendant is the statutory employer of the plaintiff, and therefore immune from tort liability. Kennington was injured while working at a Texas well site. Kennington's employer, Bo-Gray Casing Company was domiciled in Louisiana, but maintained offices in both Texas and Louisiana. Bo-Gray orally contracted with the defendant, also a Louisiana corporation, to provide casing services to a drilling rig in Texas. Kennington filed suit against H. Blume Johnson, Inc., which moved for summary judgment raising the statutory employer defense pursuant to Louisiana R.S. 23:1032 and 1061. After determining that Louisiana law applied pursuant to Louisiana Civil Code Article 3544(1), the court granted summary judgment finding that defendant was the statutory employer.

domiciliaries of the same state, Louisiana. In the present action, subsection (2) rather than (1) applies because both parties are not domiciled in the same state. Grey Wolf is domiciled in Texas, where the injury occurred, and plaintiffs' are residents of Louisiana. This factual situation is controlled by Article 3544(2) mandating the application of Texas tort law since Grey Wolf was domiciled in Texas and its alleged conduct that caused the accident occurred in Texas.

D. LOUISIANA'S "INTEREST ANALYSIS" APPROACH ALSO FAVORS TEXAS LAW

Prior to the enactment of Book IV of the Louisiana Civil Code, the Louisiana Supreme Court developed an "interest analysis" test to determine the applicable substantive law in conflict of law matters. Jagers vs. Royal Indemnity Company, 276 So.2d. 309 (La. 1973). The articles contained in Book IV codify the "interest analysis" approach developed and used by the Louisiana Supreme Court. Both the Second Circuit and Fourth Circuit Court of Appeals in Louisiana discussed the "interest analysis" approach in Kennington and Levy, respectively. Both courts concluded that the same result was obtained whether they applied article 3544(2) or used the "interest analysis" approach.

In Jagers, a mother sued her major

son for personal injuries sustained in an automobile accident occurring in Mississippi. Both the mother and son were domiciled in Louisiana. Mississippi law prohibited the mother from suing her child, while Louisiana law allows such an action. The Supreme Court applied Louisiana law to the action because both parties were domiciled in Louisiana; thus, Louisiana had an interest in applying its law and Mississippi had none.

In Kennington, both parties were also domiciled in Louisiana; thus, Louisiana had an interest in applying its law and Texas had none.

The parties were both domiciled in Alabama, the policy of insurance was issued in Alabama in Levy, and the only contact with Louisiana was that the automobile accident occurred in

Louisiana; thus, Alabama had a greater interest in applying its law than Louisiana.

However, in the present case, only one party is domiciled in Louisiana, the Carrieres. The tortfeasor, Grey Wolf, is domiciled in Texas and the accident occurred in Texas. In addition, the contract between Grey Wolf and UPRC was perfected in Texas as well as the agreement between Grey Wolf and Chandeleur, which expressly provides for Texas law; thus, Texas has the greater interest in this action and its law should govern.

Subjecting a defendant tortfeasor to the law of a state where they have no interest is unjust, as was determined by the courts in both Jagers and Kennington. Such injustice will result if the lower decisions are affirmed. An affirmation

of the lower court's decision will allow Louisiana workers' compensation law to be applied to a Texas defendant in a Texas tort action for injuries sustained in Texas.

Grey Wolf is a Texas corporation domiciled in Houston, Texas. It provided defective equipment to a drilling site in Texas. Louisiana does not have an interest in protecting Grey Wolf from accidents that occur in Texas. In consideration of the "interest analysis" approach formerly used in Louisiana, this court is asked to reverse the lower court rulings finding that Texas has the interest in this litigation rather than Louisiana.

E. FIFTH CIRCUIT'S DECISION

The Fifth Circuit agreed that statutory employer immunity provisions involve issues of financial protection

and loss distribution and that Article 3544 of the Louisiana Civil Code is the appropriate conflict provision for determining the choice of law analysis. The Fifth Circuit, however, does not agree that "the choice of law analysis ends with the definitive result mandated by Article 3544(2)." The Fifth Circuit further finds that this particular dispute presents an exceptional situation allowing it to go one step beyond Code Article 3544 and apply Louisiana law "to the dispute despite the fact that Article 3544(2) mandates that Texas law applies."

The Fifth Circuit conducted its own separate interest analysis concluding that Louisiana law would be most seriously impaired if Texas law were applied to the dispute. In support of its action, the Fifth Circuit relies on Louisiana Civil Code Article 3547, which

provides the following:

> "The law applicable under Articles 3543-3546 shall not apply if, from the totality of the circumstances of an exceptional case, it is clearly evident under the principles of Article 3542, that the policies of another state would be more seriously impaired if its law were not applied to the particular issue. In such event, the law of the other state shall apply."

In the comment that follows Civil Code Article 3547, the commentator states that:

> "...the choice-of-law rules contained in Articles 3543-3546 were drawn from the general principles enunciated in Article 3542. By designating in advance the applicable law, these rules will enable the courts to avoid the laborious analysis required by Article 3542, and thus will alleviate their choice-of-law burden while providing the desired measure of predictability....as with any a priori choice-of-law rules, the rules contained in Articles 3543-3546 may, in exceptional cases, produce a result that is incompatible with the principles of Article

> 3542 from which these rules have been derived. In order to avoid such a result, this Article provides an "escape mechanism"....This mechanism should be reserved for the truly exceptional cases, and the burden of persuasion for its utilization should be placed on the party who invokes it."

The Fifth Circuit, apparently relying on the commentary to Code Article 3547, is "convinced that Louisiana law would be most seriously impaired if Texas law were applied to the dispute, thereby concluding that Texas law must yield to Louisiana law." In concluding that the present matter is an exceptional case, the Fifth Circuit also considered Article 3542 and the totality of the circumstances. Article 3542 provides that issues of delictual or quasi-delictual obligations are governed by the law of the state whose policies would be most seriously impaired if its laws were

not applied to the issue in dispute. That state is determined by evaluating the strength and pertinence of the states' policies in light of the pertinent contacts of each state to the parties and the events giving rise to the dispute, including the place of conduct and injury; the domicile or place of business of the parties; the state in which the relationship was centered; and the policies of Article 3515; as well as the policies of deterring wrongful conduct and of repairing the consequences of injurious acts. La. Civ. Code art. 3542.

In comparing the policies and interests of both Texas and Louisiana, the Fifth Circuit found the Texas interest to be as follows: (1) Grey Wolf is incorporated in Texas; (2) The place of conduct and injury are in Texas; and

(3) Texas has an interest in deterring wrongful conduct and repairing the consequences of injurious acts. The court found Louisiana's interest to be stronger by comparison which are: (1) Carriere is domiciled in Louisiana; (2) Grey Wolf is qualified to do business in Louisiana, and is doing business in Louisiana; (3) Carriere was working for Grey Wolf pursuant to a Louisiana contract for hire; (4) Carriere's direct employer with whom Grey Wolf established the contractual relationship to "hire" Carriere is domiciled in Louisiana; (5) Carriere has received workers' compensation benefits for his injury pursuant to Louisiana law; (6) Louisiana has an interest in protecting both citizens who are recruited and hired in Louisiana and employers that are doing business in the State; (7) Louisiana has

an interest in protecting foreign corporations in order to create a friendly business atmosphere in which to promote commerce and industry; (8) Louisiana has an interest in the consistent and comprehensive implementation of its workers' compensation laws; and (9) As articulated by Article 3515 the policies and needs of the interstate system, which includes the expectation of the parties and the minimization of adverse consequences that might follow from subjecting a party to the law of more than one state are best served in this dispute by the application of Louisiana law.

Mansel and Janell Carriere and Aetna disagree with the court's conclusions, in particular with the court's decision to go beyond the application of Code Article 3544 and the determination that Louisiana

rather than Texas law applies. The court's conclusions are not only contrary to 3544, but contrary to Levy and Kennington. In addition, in trying to give full faith and credit to the policies of Louisiana, the court has overridden the substantial interest of the State of Texas, which is forbidden by Thomas v. Washington Gas Light Company, 448 U.S. 261, 100 S.Ct. 2647, 65 L.Ed. 2d 757 (1980). The United States Supreme Court held that it is for each state to formulate its own policy whether to grant supplemental awards according to its preception of its own interests. The United States Supreme Court further concluded that the substantial interest of a second state should not be overridden by another state through unneccessarily aggressive application of the full faith and credit clause.

Thomas, 100 S.Ct. at 2663.

In Thomas, the plaintiff was domiciled and hired in the District of Columbia, but injured in the State of Virginia, factually similar to the instant matter. Thomas could recover workers' compensation under either the law of Virginia or the law of the District of Columbia. Thomas received benefits under the Virginia Workmens' Compensation Act for his injuries and subsequent to that received a supplemental award under the law of the District of Columbia. The respondent argued, like Grey Wolf, that Virginia's exclusivity provisions precluded any recovery under any other state's laws. The court held that a state has no legitimate interest withing the context of our federal system in preventing another state from granting a

supplemental compensation award when that second state would have had the power to apply its workmen's compensation law in the first instant. Thomas, 100 S.Ct. at 2663. Likewise, this court cannot preclude Carriere from seeking the benefits he is entitled to under the substantive tort law of Texas, especially since Texas had the power to apply its law in the first instance.

Even though Thomas involved the issue of whether the plaintiff could recover under the workers' compensation laws of two states, and our case involves the workers' compensation laws of one state and the tort laws of another, the same rationale applies for allowing the recovery under both states' laws whether it be under the workers' compensation statutes or the tort statutes. When the laws of different states apply, one state

cannot assert exclusivity provisions extraterritorially thereby precluding the parties from asserting their rights and remedies under the law of the second state.

Moreover, the interest analysis conducted by the Fifth Circuit included several factual errors and the omission of other pertinant facts. The factual errors and omissions are crucial since the court based its decision on the totality of the circumstances finding that Louisiana has a greater interest than Texas.

The court's decision not to apply Texas law precludes plaintiffs from exercising rights they are clearly entitled to under both Louisiana and Texas law. In weighing the interest of Louisiana and Texas, the Fifth Circuit incorrectly considered two interests of

Louisiana that should have been Texas interests. First, the Fifth Circuit states in Louisiana interest (3) that "Carriere was working for Grey Wolf pursuant to a Louisiana contract for hire". Carriere was actually working for Chandeleur, not Grey Wolf, pursuant to a Louisiana contract for hire. At the time of the accident, Carriere was working in Texas pursuant to a Texas contract between Chandeleur and Grey Wolf. Second, Louisiana interest (4) states that "Carriere's direct employer, with whom Grey Wolf established the contractual relationship to hire Carriere is domiciled in Louisiana." Carriere's direct employer, Chandeleur, is a Texas corporation, not a Louisiana corporation.

In its reasons for denying petitioners' application for rehearing, the Fifth Circuit addressed the two

misstatements. The court believes the Carrieres are misreading interest (3) and states that the essential point of the statement is the fact that Carriere was working pursuant to a Louisiana contract for hire. Carriere does not dispute that he was working pursuant to a Louisiana contract for hire, but that contract was with his employer, Chandeleur, and not the defendant, Grey Wolf, and has no bearing on the tort suit brought against Grey Wolf. In regards to the fourth Louisiana interest, the court admits that it misspoke in stating that Carriere's direct employer was domiciled in Louisiana. The court further states that the statement should reflect that Chandeleur is authorized to do business in Louisiana and in fact is doing business in Louisiana. The court's amended statement is correct, however, again the fact that Chandeleur is doing business in Louisiana has no bearing

on Mr. Carriere's lawsuit against Grey Wolf, a Texas corporation doing business in Texas.

The court in conducting its analysis chose to consider as many Louisiana interests as possible while failing to consider all pertinant facts and interests of Texas. While the court's considered more Louisiana interests than Texas interests in its analysis, the Louisiana interests considered by the court have no bearing on the tort suit against Grey Wolf, such as the fact that Carriere was working for Chandeleur pursuant to a Louisiana contract for hire, that Chandeleur was authorized to do business in Louisiana, and that Carriere received workers compensation benefits pursuant to Louisiana law.

While the court correctly stated as a Louisiana interest that Carriere is

domiciled in Louisiana, it failed to consider that Carriere was working in Texas at the time of the accident and injury. And while the Fifth Circuit listed as a Louisiana interest that Louisiana has an interest in protecting both citizens that are recruited and hired in Louisiana and employers that are doing business in this state, it failed to consider that Texas has this interest as well. Texas not only has an interest in protecting innocent victims injured in its state, it has a substanial interest in regulating the conduct of Texas corporations operating and causing injury in its state and an interest in repairing the consequences of any injurious acts occurring in Texas. Louisiana does not have an interest in protecting Grey Wolf from accidents that occur in Texas. The interest in compensating a plaintiff is

not served by application of Louisiana law. The Texas interest in forcing Grey Wolf to be safe is served by the application of Texas law.

The court failed to consider pertinent information, contacts and interest of Texas in conducting its analysis. The most important factors in any analysis is the place of the injury - Texas - and the domicile of the parties involved - the employer and the tortfeasor are both domiciled in Texas, while only the plaintiff is domiciled in Louisiana. Furthermore, the employer and the tortfeasor expressly provided for Texas law to apply, yet the court insists on applying Louisiana law. And last, but not least, Louisiana Civil Code Article 3544(2) expressly provides for the application of Texas law under the facts. The court has recognized the application

of article 3544, yet it chose to consider a narrow list of Texas factors and weigh them against an inflated list of Louisiana factors to reach the result that Louisiana law applies.

The Fifth Circuit states in its opinion that "by running Appellants claims simplistically through a Civil Code Article 3544(2) checklist,... [they] would be guilty of failing to consider the effect that such a ruling would have on Louisiana workers' compensation law."

The Carrieres contend that the lower courts would not be guilty of anything by applying Civil Code Article 3544(2) to this dispute because article 3544 is directly on point and resolves this dispute without the need to conduct an independent analysis. The Louisiana courts that have considered similiar matters have utilizied article 3544

without feeling the need to go a step beyond the statute. Furthermore, the legislature has designated the law to be applied allowing the courts to avoid conducting their own analysis.

The Fifth Circuit further stated that its holding "is a particularized response to an exceptional case; a response that avoids the piecemeal application of different laws to an equally piecemeal attempt to obtain double - or at least overlapping - recovery for the same injury." Petitioners submit that the application of Texas law to this matter does not result in the "piecemeal application of different laws" as this matter is against one defendant and its insurer and once Texas law is applied to the matter, the choice of law issue is resolved. Furthermore, the Louisiana conflict of

law provisions are fashioned in such a way to allow the application of different laws to different issues.

Petitioners find it interesting that the courts have applied Louisiana law in an attempt to avoid piecemeal application of the laws of different states; however, Grey Wolf in its contract with Chandeleur expressly provided for Texas law to govern while their defense in this lawsuit has been that Louisiana law applies, granting them tort immunity. The lower courts' decisions in fact actually provide for the application of the laws of different states as Texas law governs Grey Wolf's actions, but Louisiana law immunizes them from tort liability resulting from their actions in Texas.

Additionally, any monies recovered by the Carrieres in its tort action

against Grey Wolf will not result in double recovery, nor will it result in overlapping recovery. This is because Grey Wolf will be entitled to an offset for any amounts previously paid by them and Mr. Carriere's employer, Chandeleur, and Aetna will be reimbursed by the tortfeasor for any amounts paid on behalf of Mr. Carriere. Grey Wolf has led the lower courts to believe that Mr. Carriere is a bad person for suing Grey Wolf and is attempting to recover twice for his injuries, once in Louisiana and once in Texas. That is not the case. As explained above, Mr. Carriere will not receive double recovery. Moreover, the workers' compensation laws of both Texas and Louisisana expressly allow injured employees and/or employers to pursue third party tort actions against the third party tortfeasor. La. R.S.

23:1101, 1102.[2]

The Fifth Circuit stated in its conclusion that "we are convinced that a Louisiana court, pursuant to Louisiana Civil Code Article 3547, would apply

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[2]Notwithstanding the fact that Mr. Carriere has received workers' compensation benefits under Louisiana law, he can still proceed against Grey Wolf under Texas tort law. This is because the Louisiana compensation laws apply to the rights and remedies as between Mr. Carriere and his employer, Chandeleur. However, the law that governs the rights and remedies as between Mansel and third parties, Grey Wolf, is tort law. The claims between Mr. Carriere and Chandeleur are controlled by the Louisiana workers' compensation statutes. This was stipulated to by counsel for Mr. Carriere and counsel for Chandeleur. Such stipulation governs the claims between Mansel and his employer and does not control the claims between Mr. Carriere and other parties, such as Grey Wolf. The workers' compensation provisions in Louisiana provide that workers' compensation is the exclusive remedy for an employee against his employer. La.R.S. 23:1032. However, this exclusive remedy does not prevent the employee from maintaining tort actions against third party tortfeasors. La.R.S. 23:1101. This is the law in Texas as well.

Louisiana substantive law to Carriere's dispute against his statutory employer, Grey Wolf." Petitioners have a hard time believing that a Louisiana court would have reached the result that the district court and Fifth Circuit reached in this matter. Both of the Louisiana courts that have considered similar issues applied article 3544 period. The court in Kennington, considered facts very similar to the facts of our dispute and applied the law as mandated by article 3544, which the lower courts should have done in this matter.

CONCLUSION

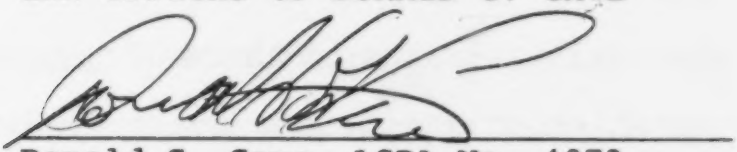
Petitioners submit that the issue before the court is a conflict of law issue, the resolution of which can be found by utilizing Louisiana Civil Code article 3544, the specific code article of Louisiana's Civil Code that deals with

issues of loss distribution and financial protection. The facts of this case are factually similar to those of Kennington, in which the Louisiana court applied the code article to resolve the issue. The lower courts' should have followed the decision of the Louisiana courts in Kennington in resolving the dispute in this matter, which would have resulted in the application of Texas law.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted:

LAW OFFICES OF DONALD G. CAVE



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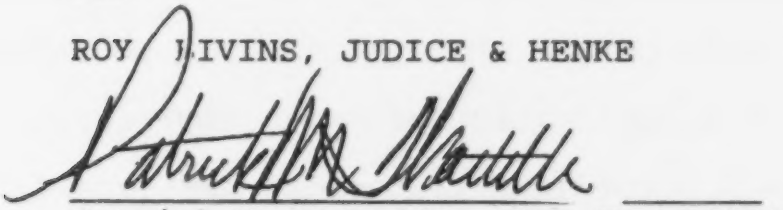

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April 14, 1995

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon all counsel of record by placing a copy of same in the United States mails, postage prepaid and properly addressed to:

John F. Wilkes, III, Esquire
Paul D. Gibson, Esquire
BORNE, WILKES AND GIBSON, L.L.P.
Suite 1000 - Premier Bank Building
200 West Congress Street
Lafayette, LA 70501

Baton Rouge, Louisiana, this 14th day of April, 1995.

Donald G. Cave

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U.S. COURT OF APPEALS
FILED
DEC 09 1994
CHARLES R. FULBRUGE III
CLERK

NO. 94-40119

MANSEL J. CARRIERE and
JANELL L. CARRIERE,

Plaintiffs-Appellants,

and

AETNA CASUALTY & SURETY COMPANY,

Intervenor-Appellant,

versus

CHANDELEUR ENERGY CORPORATION, ET AL.,

Defendants,

and

GREY WOLF DRILLING COMPANY, INC., and
PETROLEUM MARINE INSURANCE COMPANY, INC.,

Defendants-Appellees.

Appeals from the
United States District Court
For the Western District of Louisiana
(CA No. 92-1111)

Before REYNALDO G. GARZA, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM*:

Plaintiffs-Appellants Mansel and Janell Carriere, and Appellant-Intervenor Aetna Casualty & Surety Company, appeal a district court order granting the motion of Defendant-Appellee Grey Wolf Drilling Company for summary judgment. Grey Wolf's motion sought dismissal of the Carrieres' tort claim for a work-related injury sustained by Mr. Carriere. The

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*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

district court granted the motion based on the statutory employer immunity provision of the Louisiana workers' compensation law.

The Carrieres and Aetna (collectively, Appellants) challenge the district court's summary judgment in favor of Grey Wolf, asserting that the court erred when it decided to apply Louisiana workers' compensation law rather than the law of Texas. Appellants insist that their claim against Grey Wolf raises a choice of law issue that must be resolved according to Louisiana's conflict of laws provisions. Appellants urge that, when the appropriate Louisiana conflict of laws provision is applied to the facts of this dispute, it becomes apparent that the substantive law of

Texas governs their claim against Grey Wolf.

Contrary to the Appellants' assertions, we conclude that the district court made the proper conflicts choice when it selected Louisiana law and properly applied it in granting Grey Wolf's motion for summary judgment based on the immunity extended to statutory employers under Louisiana workers' compensation law. In our de novo review of the district court's ruling we conclude that, when considered under the totality of the circumstances, Louisiana's public policy, as manifested in its workers' compensation law, would be seriously impaired if that law were not applied to this particular dispute. In light of this determination, we reach the same result as did the district court

when it granted Grey Wolf's motion for summary judgment of dismissal.

I.

FACTS AND PROCEEDINGS

Plaintiff-Appellant Mansel Carriere, a Louisiana resident, was hired in Louisiana by Chandeleur Energy Corporation, a Texas corporation, to work at a drill site in Texas. Grey Wolf, another Texas corporation, conducted the drilling project using personnel furnished by Chandeleur pursuant to a contract between Chandeleur and Grey Wolf. Under this contract Chandeleur agreed to provide Grey Wolf with the laborers and supervisory personnel necessary to drill the well.

After Carriere was injured at the Texas location, he and his wife, Janell, brought this diversity jurisdiction suit

in federal district court. The action was grounded in negligence and strict liability against both Chandeleur and Grey Wolf.

Chandeleur filed a motion for summary judgment asserting that, as Carriere's direct employer, it is immune from civil tort liability for its employee's work-related injury by virtue of the exclusive remedy provisions of Louisiana's workers' compensation law. The district court granted Chandeleur's motion, concluding that the Carrieres' claim against Chandeleur was governed by Louisiana workers' compensation law. The district court found that the Carrieres' sole remedy against Chandeleur was the recovery of benefits provided by Louisiana's workers' compensation laws. As Louisiana law immunizes direct

employers from civil liability claims that are covered by workers' compensation, the Carrieres' suit against Chandeleur was dismissed. This ruling was not appealed.

After the district court ruled on Chandeleur's summary judgment motion, Grey Wolf filed its own motion for summary judgment. It posited that under Louisiana workers' compensation law, Grey Wolf, as Carriere's "statutory employer," is also immune from civil liability. The district court agreed with Grey Wolf and granted its motion for summary judgment based on the immunity extended to statutory employers under Louisiana law. The Carrieres and Aetna timely filed this appeal.

II

DISCUSSION

A. STANDARD OF REVIEW

The grant of a motion for summary judgment is reviewed de novo, using the same criteria employed by the district court.[1] In determining whether the grant of summary judgment was proper, we view all fact questions in the light most favorable to the nonmovant. Questions of law are reviewed de novo.[2]

B. DIVERSITY AND CONFLICT OF LAWS

The Carrieres, domiciliaries of Louisiana, brought suit against Grey Wolf, a Texas corporation, in a federal district court in Louisiana, with

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[1] United States Fidelity & Guar. Co. v. Wigginton, 964 F.2d 487, 489 (5th Cir. 1992); Walker v. Sears, Roebuck & Co., 853 F.2d 355, 358 (5th Cir. 1988).

[2] Walker, 853 F.2d at 358.

jurisdiction grounded in diversity of citizenship. Federal courts sitting in diversity are bound to apply the substantive law of the forum state, including the forum state's conflict of laws provisions.[3] Thus, argue appellants (and none disputes) the court must look to Louisiana's conflict of laws provisions to determine whether the substantive law of Texas or Louisiana governs this claim.

1. Article 3544: Financial Protection and Loss Distribution

Appellants assert that, as their dispute involves a choice of law between the statutory immunity provisions of the workers' compensation laws of Louisiana and Texas, it fits within the scope of

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[3]Klaxon Co. v. Stentor Elec. Mfg. Co., Inc., 313 U.S. 487, 496 (1941).

Civil Code article 3544, the conflict of laws rule covering issues of loss distribution and financial protection.[4] The Carrieres and Aetna rely on Kennington v. H. Blume Johnson, Inc.,[5] which resolved a statutory employer immunity conflict of laws issue between Louisiana and Texas workers' compensation laws by applying Civil Code article 3544 to the conflict.[6] A threshold issue in

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[4]See LA. CIV. CODE ANN. art. 3544 (2)(a) (West 1994) (conflict of laws provision for issues of loss distribution and financial protection) (prescribing that if at time of injury, injured person and person causing injury are domiciled in different states, and both injury and conduct causing injury occur in one state, laws of that state govern).

[5]632 So.2d 883 (La. App. 1994) revs'd on other grounds, 638 So.2d. 1966 (La. 1994).

[6]Id. at 886. Kennington, a Louisiana employee, was "leased" by his direct employer (a Louisiana corporation) to the defendant-appellant (a Louisiana corporation), and was subsequently

Kennington was whether the appropriate Louisiana conflicts provision was article 3543, the Civil Code provision governing standards of conduct and safety, or article 3544, the provision governing issues of loss distribution and financial protection. In resolving the choice of law issues by applying article 3544, the

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injured at a Texas job site. Kennington initially brought suit in Louisiana. He later tried to dismiss the matter without prejudice and file suit in Texas, claiming that Texas law, rather than Louisiana law, governed the case. The trial court determined that, as the Louisiana-based defendant was Kennington's statutory employer, the claim was covered exclusively by the Louisiana's workers' compensation act. Consequently, the trial court granted summary judgment in favor of the defendant. Kennington appealed, questioning the trial court's application of Louisiana law, and arguing that Texas law, rather than Louisiana law governed the dispute. The appellate court resolved the conflict of laws issue in favor of Louisiana law, and affirmed the summary judgment based on the immunity extended to statutory employers under Louisiana's workers' compensation law.

Kennington court reasoned that statutes that provide immunity from suit are appropriately classified as rules of loss distribution or financial protection.[7] Once the court determined that article 3544 governed the choice of law issue and applied the facts of the dispute to the provision, it concluded that Louisiana law was the substantive law to apply to the dispute.

The Carrieres and Aetna point out that, like the choice of law issue in Kennington, their dispute against Grey Wolf involves a conflict between the statutory employer provisions of Texas and Louisiana workers' compensation law. The appellants suggest that, as Kennington represents Louisiana's interpretation of the state's recently

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[7] Id.

revised conflict of laws provisions, we should be led by the state court's reasoning and resolve the instant conflict according to the elements of article 3544. They argue that, when the facts of the instant dispute are plugged into article 3544(2), the Code mandates that Texas law governs their claim against Grey Wolf.[8]

We agree that statutory employer immunity provisions involve issues of financial protection and loss distribution. We also agree that article 3544 of the Louisiana Civil Code is the appropriate conflicts provision with

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[8]See LA. CIV. CODE ANN. art. 3544(2) (West 1994) (when injured person and person causing injury are from different states (here Louisiana and Texas), and when injury and conduct that caused it are in one of those states (Texas), then the law of that state (Texas) governs dispute).

which to begin the choice of law analysis for this dispute. We do not agree, however, that, for this particular dispute, the choice of law analysis ends with the definitive result mandated by article 3544(2). We distinguish the facts of the instant case from Kennington and, for the reasons discussed below, conclude that the choice of law issue here presents an exceptional situation. It thus comes within the scope of the Code's conflict of laws provision for exceptional cases, which in this instance requires the application of Louisiana law to the dispute despite the fact that article 3544(2) mandates that Texas law applies.

In distinguishing the facts of the instant case from those of Kennington we first observe that previous adjudication

has already determined that Carriere is entitled to Louisiana workers' compensation benefits, whereas, the Louisiana Supreme Court, in reversing and remanding Kennington, concluded that Kennington's statutory employer was not entitled to evoke Louisiana's statutory employer defense because it had not satisfied its burden of showing that Kennington was entitled to Louisiana benefits. In addition, we consider significantly distinguishable the fact that unlike the plaintiff in Kennington, Carriere has already received compensation from his direct employer pursuant to Louisiana's workers' compensation law. Moreover, we note that, unlike Kennington, in which the court reasoned that Louisiana law was the appropriate substantive law to apply

because the same result was reached using either an article 3544 analysis or a separate interest analysis, we are unable to reach an analogous result.[9] We are convinced that even though a conflicts analysis under article 3544(2) would mandate the application of Texas law, a separate interest analysis reveals that Louisiana law would be most seriously impaired if Texas law were applied to the dispute. In light of these incompatible

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[9]In conducting a separate interest analysis the court noted that Louisiana law was the appropriate law to apply to the dispute because Louisiana's interests and policies were stronger than those of Texas. The court considered the following factors in its analysis: both parties were Louisiana domiciliaries, the plaintiff's employment was principally in Louisiana, the work in Texas was temporary, the only nexus between Texas and the parties was the occurrence of the accident there, and Louisiana has a strong interest in applying its workers' compensation laws to regulate the rights and liabilities of the employer and the injured employee.

conclusions, we determine that we must look to the Code's conflict of laws provision that addresses this type of "conflict within a conflict." Thus, we carry the choice of law analysis presented in this appeal a step further and analyze it under article 3547, the Code provision governing "exceptional cases."[10]

2. Article 3547: Exceptional Cases

Article 3547 provides the following:

> [t]he law applicable under Articles 3543-3546 shall not apply if, from the totality of the circumstances of an

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[10]We are not concluding that section 3544 never applies to a dispute involving competing statutory employer immunity provisions. Neither are we contradicting the Louisiana courts' interpretation of the code's conflicts provisions. We are merely taking the conflicts analysis the necessary step further in light of our conclusion that given the exceptional status of this dispute the policies of Louisiana would be adversely affected if Texas law was applied to the dispute.

> exceptional case, it is clearly evident under the principles of Article 3542, that the policies of another state would be more seriously impaired if its law were not applied to the particular issue. In such event, the law of the other state shall apply.[11]

Commentary to article 3547 notes that the choice of law rules contained in Articles 3543-3546 were established to avoid the laborious analysis required by Article 3542, the general rule for choice of law issues. The commentary also notes, however, that the rules contained in Articles 3543-3546 may, in exceptional cases, produce a result that is incompatible with the principles of Article 3542. Thus, article 3547 provides an "escape mechanism" for avoiding otherwise incompatible results

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[11]LA. CIV. CODE ANN. art. 3547 (West 1994).

in resolving choice of law issues.

When a court is convinced that the laws of a state other than the one designated by Articles 3543-3546 would be significantly impaired if not applied to a dispute, then the law that is designated by Articles 3542-3546 must yield to Article 3542 and the law of the state whose policies would be most seriously impaired governs the particular dispute.[12] As we are convinced that Louisiana law would be most seriously impaired if Texas law were applied to the dispute, thereby concluding that Texas law must yield to Louisiana law, we discuss briefly the key elements of article 3547, namely the principles of Article 3542 and the totality of the

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[12]LA. CIV. CODE ANN. art. 3547 commentary (West 1994).

circumstances that lead us to conclude that this is an exceptional case.

a. *Principles of Article 3542: An Interest Analysis*

Article 3542 provides that, except as otherwise provided, issues of delictual or quasi-delictual obligations are governed by the law of the state whose policies would be most seriously impaired if its laws were not applied to the issue in dispute.[13] That state is determined by evaluating the strength and pertinence of the state's policies in light of the pertinent contacts of each state to the parties and the events giving rise to the dispute, including the place of conduct and injury; the domicile or place of business of the parties; the state in which the relationship was

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[13]LA. CIV. CODE ANN. art. 3542 (West 1994).

centered; and the policies of Article 3515 (the policies and needs of interstate systems, the policies of upholding the justified expectations of the parties, and the policy of minimizing the adverse consequences that might follow from subjecting a party to the law of more than one state).

We compare the policies and interests of both Texas and Louisiana to support our conclusion that, as Louisiana's interests and contacts are greater than those of Texas, the policies of Louisiana would be most seriously impaired if its laws were not applied to the instant dispute. Texas' interests are (1) Grey Wolf is incorporated in Texas; (2) the place of conduct and injury are in Texas; and (3) Texas, we surmise, has an interest in deterring

wrongful conduct and repairing the consequences of injurious acts. Louisiana's interests - stronger by comparison - are (1) Carriere is domiciled in Louisiana; (2) Grey Wolf is qualified to do business in Louisiana, and is doing business in Louisiana; (3) Carriere was working for Grey Wolf pursuant to a Louisiana contract for hire; (4) Carriere's direct employer, with whom Grey Wolf established the contractual relationship to "hire" Carriere is domiciled in Louisiana; (5) Carriere has received workers' compensation benefits for his injury pursuant to Louisiana law; (6) Louisiana has an interest in protecting both citizens who are recruited and hired in Louisiana and employers that are doing business in the state; (7) Louisiana has

an interest in protecting foreign corporations in order to create a friendly business atmosphere in which to promote commerce and industry; (8) Louisiana has an interest in the consistent and comprehensive implementation of its workers' compensation laws; and (9) as articulated by article 3515, the policies and needs of the interstate system, which includes the expectations of the parties and the minimization of adverse consequences that might follow from subjecting a party to the law of more than one state are best served in this dispute by the application of Louisiana law. When the totality of these factors is considered it is evident that the policies of Louisiana would be more seriously impaired if Texas law were applied to this dispute than would Texas

if Louisiana law were applied.

b. *Totality of the Circumstances and Exceptional Cases*

To reach our classification of this case as "exceptional," we analyze it in the perspective of the totality of the circumstances: Carriere's accident yielded claims against two contractually related defendants, Chandeleur and Grey Wolf; the Carrieres' claim against Chandeleur, a foreign corporation and Carriere's direct employer, was resolved properly by application of Louisiana's workers' compensation law; Carriere was compensated for his injury pursuant to Louisiana law; Appellants' claims against Grey Wolf - which are based on the same accident - are made against a second defendant which, like Chandeleur, is also a foreign corporation; under Louisiana law - the same law that has

already compensated Carriere for his injury vis á vis the first defendant (Chandeleur) - the second defendant (Grey Wolf) clearly qualifies as an immunized statutory employer,[14] yet in this dispute, Carriere urges us to apply Texas

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[14]See LA. REV. STAT. ANN. § 23:1032 A. (1)-(2) (West 1994) (articulating that remedies provided to employee under statute are exclusive remedies against employer and statutory employer, thereby immunizing employer(s) from civil tort liability); see also, Morgan v. Gaylord Container Corp., 30 F.3d 586, 589 (5th Cir. 1994) (citing Deal v. International Paper Co., 632 So.2d 870, 871 (La.App. 1994), rev'd, 637 So.2d 453 (La. 1994)) (reiterating that statutory employer relationship exists when contract work performed by employee is integral or essential to principal's trade or business); see also Salsbury v. Hood Indus., Inc., 982 F.2d 912, 916 (5th Cir. 1993) (articulating that appropriate standard for determining statutory employer status is "integral relation" test).

The parties do not dispute that under Louisiana law, Grey Wolf is Carriere's statutory employer, and thus, is immune from civil tort liability for any claims arising from an injury that is compensated under the state law.

law so that he can recover in tort against Grey Wolf; and finally if, by running Appellants' claims simplistically through a Civil Code article 3544(2) checklist, we were to conclude that Texas law applies, we would be guilty of failing to consider the effect that such a ruling would have on Louisiana's workers' compensation law - again, the law under which Carriere has already applied for and received benefits.

C. *Analogous Case Law*

When an analysis under article 3547 is viewed in conjunction with Louisiana's interest in the consistent and comprehensive application of its workers' compensation law we see clearly that, if Texas law were to be applied to this dispute, Louisiana law and the policy it

embodies would be seriously impaired. The propriety of this conclusion is bolstered by the recognition that once an injured employee elects to seek and receive worker's compensation benefits under the workers' compensation law of Louisiana, he is bound to its provisions, including specifically the exclusivity provisions.[15] Agreeing with the

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[15] See e.g., Carriere v. C.C. Crane Corp., 812 F. Supp. 90, 91 (S.D. Tex. 1992)(hereinafter, "Crane"). In Crane, Ronald Carriere, a Louisiana resident, was killed in Texas while working for the defendant, Grey Wolf, a Texas corporation. As a result of Carriere's death, his widow began receiving benefits pursuant to Louisiana workers' compensation laws. Subsequently, Mrs. Carriere filed a claim against Grey Wolf for death benefits under Texas law. The district court granted Grey Wolf's motion for summary judgment, holding that once Mrs. Carriere began receiving Louisiana workers' compensation benefits she was bound to Louisiana workers' compensation law. As Louisiana law immunized Grey Wolf from civil liability for Carriere's death, the district court would not permit Mrs. Carriere to sustain a tort

reasoning of the district court in Crane, we conclude that if, under the totality of its circumstances of the instant case, Mansel Carriere were permitted to bring suit against Grey Wolf in Louisiana but were also permitted to have Texas law apply - despite his having received benefits under the Louisiana regime - we would not be giving "full faith and credit to the policies which [Louisiana] wants to preserve in providing for employer immunity."[16]

Our Erie-bound decision to protect Louisiana's workers' compensation law to its full extent comports with an earlier Louisiana state court case, Wayne v.

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action against Grey Wolf based on Texas law. Id. at 90 - 93.

[16]Id. at 92.

Olinkraft,[17] in which the court reviewed a choice of law issue almost identical to the one at issue in the instant case.[18] In Wayne the state appellate court

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[17]293 So.2d 896 (La. App. 1974).

[18]See id. The plaintiff in Wayne was the widow of an employee whose employer had contracted out its services (and employees) to the defendant corporation The deceased employee, a Louisiana domiciliary, was hired in Louisiana by his direct employer, a Louisiana corporation, but was killed while working in Arkansas for the defendant, his statutory employer. The employee's widow filed for, and began receiving, Louisiana workers' compensation benefits under the direct employer's compensation insurance policy. Subsequently, she brought a tort action against the defendant in Louisiana. The trial court granted the defendant's motion for summary judgment based on Louisiana's statutory employer immunity. The plaintiff appealed the trial court's grant of summary judgment, asserting that Arkansas law rather than Louisiana law governed the dispute. The appellate court affirmed the trial court's grant of summary judgment based on Louisiana workers' compensation law, holding that as plaintiff had received Louisiana benefits, she was bound to the full extent of Louisiana law.

discussed the Restatement (Second) Conflict of Laws in detail before holding that an employee who accepts an award under the workers' compensation scheme of a given state may be bound by the provisions of that scheme insofar as immunity from tort and wrongful death liability is concerned.[19] The state

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[19]Id. at 900. The court in Wayne recognized that there are occasions when conflict of laws provisions permit tort actions in one state even though another state declares the defendant immune. See e.g., Restatement (Second) Conflict of Laws, § 183 (articulating that a state is not precluded from permitting an action in tort or wrongful death by the fact that party would be immune under a sister state's workers' compensation laws).

The Wayne court based its holding, however, on the distinction noted in section 184 of the Restatement, which reads as follows:

> Recovery for tort or wrongful death will not be permitted in any state if the defendant is declared immune from such liability by the workmen's compensation statute of a state under which the defendant is required to provide insurance

court concluded that the principles of the Restatement offered a logical, fair, and stable solution to the conflict of laws issue.[20]

> against the particular risk and under which (a) the plaintiff has obtained an award for the injury, or (b) the plaintiff could obtain an award for the injury, if this is the state (1) where the injury occurred, or (2) where employment is principally located, or (3) where the employer supervised the employee's activities from a place of business in the state, or (4) whose local law governs the contract of employment under the rules of ss 187-188 and 196.

Restatement (Second) of Conflict of Laws § 184 (1969).

Commentary to the Restatement notes that this rule applies to actions brought against immediate employers and indirect employers. In addition, the rule applies whether the defendant is required to obtain workers' compensation itself, or whether a third party is required to obtain the necessary insurance. Id. at comment a.

[20]Wayne, 293 So.2d at 900. The courts in Crane and Wayne both note that to deny a person the immunity granted him by a

We are satisfied that Crane and Wayne still tender "good law" despite their antedating the substantial revision of the Louisiana Civil Code's conflict of laws provisions. These cases highlight the exceptional status of this dispute, provide analogous support for our conclusion that Louisiana law would be seriously impaired if Texas law were applied to the instant dispute, and dictate our ultimate conclusion that once an injured employee applies for and receives benefits from the workers' compensation laws of a given state, the laws of that state apply in full to

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workers' compensation statute of a given state frustrates the efforts of that state to restrict the cost of industrial accidents and to afford a fair basis for predicting what those costs will be. Carriere v. C.C. Crane Corp., 812 F.Supp. 90, 92 n.5 (S.D. Tex. 1992); Wayne, 293 So.2d at 900.

related claims of the injured employee.

Today's holding should not be interpreted, however, as blanket protection for foreign corporations under Louisiana law. Rather, it is a particularized response to an exceptional case; a response that avoids the piecemeal application of different laws to an equally piecemeal attempt to obtain double - or at least overlapping - recovery for the same injury.

III

CONCLUSION

When we consider this case in light of the totality of the underlying circumstances, we are convinced that Carriere's suit against Grey Wolf is an exceptional conflict of laws case, and that Louisiana workers' compensation law would be seriously impaired if it were

not applied to this particular dispute. Consequently, we are convinced that a Louisiana court, pursuant to Louisiana Civil Code article 3547, would apply Louisiana substantive law to Carriere's dispute against his statutory employer, Grey Wolf. We affirm, therefore, the district court's order granting Grey Wolf's motion for summary judgment on the rationale that under Louisiana law Grey Wolf is immune from civil tort liability for the same injuries that are already covered and compensated under Carriere's workers' compensation claim.

AFFIRMED.

WESTERN DISTRICT OF LOUISIANA
FILED
JAN 11 1994
ROBERT H SHEMWELL, CLERK
BY S/ MS
DEPUTY

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

LAFAYETTE-OPELOUSAS DIVISION

MANSEL J. CARRIERE and JANELL L. CARRIERE	CIVIL ACTION NO. 92-1111 L-O
VERSUS	JUDGE HAIK
CHANDELEUR ENERGY CORPORATION and GREY WOLF DRILLING COMPANY	MAGISTRATE TYNES

****

JUDGMENT

A hearing was held on December 16, 1993, on the Motion for Summary Judgment filed by Grey Wolf Drilling Company and Petroleum Marine Insurance Agency, Inc. After having reviewed the relevant pleadings, the briefs of all parties, and after hearing oral arguments of all

parties, the Court is of the conclusion that the Motion should be granted, for the reasons expressed by the Court during the oral argument, and, accordingly;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Motion for Summary Judgment filed by Grey Wolf Drilling Company and Petroleum Marine Insurance Company be and it is hereby granted, and the claims of Mansel Carriere and Janell Carriere, and Aetna Casualty & Surety Company, against Grey Wolf Drilling Company and Petroleum Marine Insurance Agency, Inc., are hereby dismissed with prejudice and at Plaintiff's cost.

Thus done and signed this 10th day of January, 1994, in Lafayette, Louisiana.

/S/ R.T. Haik
UNITED STATES DISTRICT JUDGE

Judgment Entered 1-13-94

BY S/ MC
COPY TO CAVE
GIBSON
WILKES
WARTELLE

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

LAFAYETTE/OPELOUSAS DIVISION

MANSEL CARRIERE

VERSUS

CHANDELEUR ENERGY CORPORATION, ET AL

CIVIL ACTION
NO. 92-1111
DECEMBER 16, 1993

Transcript of proceedings before the HONORABLE RICHARD T. HAIK, SR., United States District Judge.

Proceedings recorded by mechanical stenography; transcript produced by computer.

Vivian A. Duhe'
Official Court Reporter (318) 262 6634

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* - spelled phonetically

PROCEEDINGS:

MR. GIBSON: Good morning. I'm Paul Gibson, Your Honor, for Grey Wolf Drilling Company and Petroleum Marine Insurance Company, and with me is Mr. Mark Marionneaux.

MR. CAVE: Good morning, Your Honor. I'm Don Cave. I represent Mr. Carriere, and we oppose the motion.

MR. WARTELLE: Your Honor, Patrick Wartelle. I represent Aetna Casualty and Surety Company, which is an intervenor, and we are joining in with the plaintiff and opposing the motion.

THE COURT: Okay.

MR. GIBSON: May it please the Court, Your Honor, this is a Motion for Summary Judgment by Grey Wolf Drilling Company and PMI asking for dismissal because of the statutory employer status

of Grey Wolf Drilling Company.

Mansel Carriere, the plaintiff, was injured on Grey Wolf Drilling Rig Number 14. He was employed at the time directly by Chandeleur Energy Company where he was working as a motorman. He was part of the regular crew and -- of Rig 14 and had been for some time. Grey Wolf is a drilling company. They own the rig, and they had a contract with Chandeleur to provide employees to operate Rig 14. And it's important to recognize that we are not talking about an employee leasing arrangement like Man Power where we call up and get somebody out for a three day labor help out in the yard. Chandeleur was contracted to provide employees to run the rig -- Grey Wolf's rig, to do the work that Grey Wolf was up to, namely drilling oil and gas holes, well holes,

and Grey Wolf had initiated this operation by contracting with Union Pacific Resources to drill the hole. That contract was executed. Grey Wolf made arrangements to send its rig out there and actually made a contract with Chandeleur seven days later to provide the employees to do the work of actually putting the hole in the ground.

Mansel Carriere was injured while they were tripping pipe. I don't know whether it was tripping pipe out of the hole or in the hole, but he was a motorman working the tongs on the rig floor when he was injured. He brought suit against Chandeleur, Aetna, Grey Wolf in this court. Initially, Aetna, the workers' compensation insurer of Chandeleur, denied coverage when that happened, when the coverage was denied,

Mansel Carriere, the plaintiff, demanded that Grey Wolf, his statutory employer, pay him worker's comp., which Grey Wolf did under 23:1061 of the workers' comp. statute.

Now, in January of this year, this Court entered a judgment holding that Mansel Carriere's claims against Mansel -- against Chandeleur were covered and governed by the Louisiana workers' comp statute. Now, that should be as far as the inquiry goes, because the exclusive remedy of Mansel Carriere against Chandeleur is under workers' comp. When workers' comp. applies to that claim, Grey Wolf, as a function of the operation of the Workers' Comp. Act, is the statutory employer of Mansel Carriere and is immune from suit.

What's happened is now that comp. is

up to date, plaintiff wants to pursue another remedy under another state's law, sort of a cafeteria plan, take some of the Louisiana Workers' Comp. Act, use it here to get some comp. and then throw out the rest of the Act that provides for immunity to the statutory employer, clearly, clearly covered within the Comp. Act. "Let's throw that out and let's bring in another state's law so that we can get a double recovery against Grey Wolf."

Since the Court has held and since Louisiana law applies to the plaintiff's claim against Chandeleur, the only issue on the motion for summary judgment is whether Grey Wolf is the statutory employer of Mansel Carriere.

In the opponent's brief, you don't see a word arguing that Grey Wolf is not

the statutory employer.

THE COURT: Let me ask him that.

Do you disagree that he's a statutory employer?

MR. CAVE: He's not the statutory employer under Texas law. He is under Louisiana. It's a question of what conflicts laws apply. Under Louisiana law, Your Honor, he is the clearly statutory employer. This accident didn't occur in Louisiana. It occurred in Texas. So under the conflicts there is no statutory employer defense in Texas. So, what law is applied, Louisiana or Texas?

MR. GIBSON: Your Honor --

THE COURT: I'm going to apply Louisiana. I think he's clearly a statutory employee under Louisiana law, and I think -- How can we do both here?

How can I order him as you requested last time that-- And there was no appeal from that. There was no appeal from my last order. Did you appeal from that?

MR. CAVE: No, Your Honor. We agreed that Chandeleur was his employer.

THE COURT: Okay.

MR. CAVE: We agreed on that. You have to understand that Chandeleur and Grey Wolf are both Texas companies. You have to understand that this accident occurred in Texas. The law under -- Federal Courts look to the Louisiana law on conflict. When you look to the Louisiana law on conflict, Civil Code Articles 3542, 3543 and 3544 says the law of the place where the injury and the conduct occurs. That's Texas. So, if you apply the conflicts rules in Louisiana, Texas substantive tort law

applies.

MR. GIBSON: Your Honor, our position is that there is no conflict. You see, the plaintiff -- all parties here jointly submitted the judgment to this Court. Mansel Carriere's claims against Chandeleur are covered by Louisiana comp. law.

THE COURT: And nobody appealed that.

MR. GIBSON: No conflict.

MR. CAVE: But that's not the issue here, Your Honor. Mansel Carriere's claims against Grey Wolf are covered by the tort law of Texas. He's not the employee of Grey Wolf.

THE COURT: Well, sure he is. He is a statutory employee of Grey Wolf. All of the people there were Grey Wolf-- Chandeleur people. All of the

supervisors there were--Am I wrong on that?

MR. CAVE: Yes, Your Honor. That's incorrect. They were all the employees of Chandeleur. The Vernon's Texas Statute says a subcontractor and a subcontractor's employees are not employees.

THE COURT: But all of the people on that rig were Chandeleur people; am I right?

MR. CAVE: That's correct.

THE COURT: Every one of them?

MR. CAVE: Every one of them.

THE COURT: And they went over there to run Grey Wolf's rig.

MR. CAVE: Under a contract signed in Texas, that's correct. That's correct. But, Your Honor, Grey Wolf is in the position of a products liability

manufacturer. They supplied a defective piece of equipment. Grey Wolf-- He wants to throw me in the briar patch. Grey Wolf had no workmen's compensation. He wants to say, "Well, if Chandeleur didn't have workmen's compensation, Grey Wolf will take it over." Grey Wolf had no workmen's compensation. The whole purpose of the statutory scheme is that if the subcontractor does not have workmen's compensation, then whose principal or trade under Louisiana law goes up to that for compensation. That's not the situation here. There is a clear cut conflict situation. Under Louisiana law he has no claim against Grey Wolf. Under Texas tort law he's got a complete claim in tort. The question is, Your Honor, does the Court use the conflicts law of Louisiana which applies Texas

substantive law? That's the question.

MR. GIBSON: Your Honor, the briar patch is a great analogy, it really is, because what we had was a situation where Mr. Carriere was hurt, okay. The way that this was all resolved was that this--you know, this Court decided the way we get this man through this briar patch where Grey Wolf is paying his comp. as the statutory employer, paying him comp., Judge, $30,000, the way we get him through this briar patch is to take the path that leads--that is shown by the Louisiana Workers' Comp. Statute. That's how we do it. Okay. Now, that's when Aetna came on board and paid--started to pay Mr. Carriere. And I wanted to address something. In brief, counsel says -- I couldn't believe my eyes when I read it -- says that Grey Wolf was fully

reimbursed for their comp. I can't believe they said it, Judge. Here is a transcript of a worker's comp. proceeding where both of these gentlemen were there. They know that Grey Wolf was only reimbursed half of what they paid. They are still out 15 thousand.

One of the absurdities of this case is that if Texas law applies, Grey Wolf has to intervene against itself, and that's really on the policies of workers' comp. is that, you know, it's negligence blind; accident happens on the job, the man gets compensated. We are in the briar patch. Now we got comp. Now we are getting the weekly checks. Let's find another path through the briar patch, Judge. Let's go to Texas and lets find some Texas comp. statute that's argued in the case for the first time to

support the theory that Texas tort law applies. Let's cut us another path in the briars and see if we can get around the comp. to go make some more money. And that's all we are doing. We don't really have a conflict. The clear law is that Louisiana workers' comp applies. When you apply it, it applies all the way up. Mansel Carriere knew that. Mr. Cave knew that. That's why he demanded comp. from Grey Wolf. That's why Grey Wolf paid comp. There is no tort remedy against Grey Wolf in this case, and we ask for summary judgment.

MR. WARTELLE: Your Honor, might I be heard?

THE COURT: Sure.

MR. WARTELLE: Judge, I intervened in this case on behalf of Aetna. I filed an intervention. And I wasn't in it from

the start, but I have been defending the -- the comp. cases filed by these gentlemen that worked for Chandeleur who had previously worked for Grey Wolf. So I am extremely familiar with the facts of all of the cases. There is three or four of them, and in particular this case.

A few things need to be cleared up. The first thing is, and I don't think defense counsel meant to do this, but he said that the judgment was rendered by the Court. The Court did render that judgment. And that they all agreed to it. I was not-- My client was not a party to that. I don't think that I would have agreed to a judgment along those lines. I don't really know how the Court came to the judgment and who argued what and who submitted the judgment. What the judgment said --

THE COURT: But that judgment is now over and done and it's finished.

MR. WARTELLE: I understand, Your Honor. I understand that. But what the judgment says, Your Honor, is as to Chandeleur, not as to Grey Wolf, as to Chandeleur, the Court is going to apply Louisiana law. That's one issue, the plaintiff's claim against Chandeleur. And frankly, Your Honor, I'm licensed to practice in Texas but I am not an expert on Texas law. Really, the notation that you are going to apply Louisiana law as to Chandeleur, you don't even need that, because in Texas, Chandeleur is also going to be responsible for the man's comp., because the man in fact was receiving pay checks from Chandeleur. So that's really dicta, what you put in the judgment. And I don't know who prepared

the judgment. I doubt if the Court did that. I suspect these guys did that for reasons -- and the Chandeleur lawyer -- for reasons more to do with the workers' comp. claim, because they are now taking that judgement and hitting me over the head in these workers' comp. cases and saying, "Look, Louisiana law applies because there are some questions on jurisdiction in the workers' comp. cases." I think it was really more for posturing in the other case. I don't think you really needed all that language.

Your Honor, setting that aside, the real salient issue -- I wish I could argue that the man -- if you applied Louisiana law, that the man was not a statutory employer, under the old Barry* cases I might have an argument. At least

I would have an argument that there were some factual questions, and the jury could make a decision. Under the enactments to the statute, it's going to be hard for me to argue that. But the real issue is-- They are missing the issue or they don't want the Court to see the issue. The issue is in fact what Mr. Cave says it is, whether you are going to apply Texas law or you are going to apply Louisiana law. Your Honor, there is a very simple easy answer to it. Mr. Cave briefed it, so I didn't brief it again. Article 3542, I think, if you have the Civil Code, or it's 3543 --

THE COURT: I've got a copy of it right here.

MR. WARTELLE: Your Honor, look at Article 3542--43, I'm sorry, Civil Code. It's a specific rule, a Louisiana rule

for conflicts of law. The Court is well aware that under the Claxon case, because this Court is sitting in diversity, it must apply Louisiana law, substantive law, and Louisiana conflicts of law. That's the first step we need to take.

MR. GIBSON: We'll stipulate to that, Judge.

MR. WARTELLE: The Court is aware of that. So, therefore, we go to the Louisiana Code. Under Article 3543, the code literally says if there is an issue of loss distribution or financial protection, if that is the issue, then, under subsection two, if the plaintiff is a resident of one state and the defendant Grey Wolf, which is stipulated, is a resident of Texas, if they are residents of two different states, subsection two says if the injury occurred in the state

and the conduct occurred in the state, then you apply the law of that state, if it's a loss protection issue. The injury occurred, Your Honor; there is no doubt he got hurt in Texas. The conduct occurred in Texas, that is the conduct of them continuing to use an allegedly defective piece of drilling equipment. Those two things occurred in Texas. They are in Texas. The plaintiff is in Louisiana. Under the literal, in my opinion, black and white language of Article 3543, we must apply the law of Texas under the Code, Your Honor. And Mr. Cave has briefed it, and if you want to look at-- To me, the Code article satisfies this whole argument.

What they argued in their reply brief, which is why I came here today, Your Honor, because I got it the day

before yesterday and I called your clerk and she said, "Just make your oral argument --"

THE COURT: She told you that? You didn't file a brief?

MR. WARTELLE: I did file my first brief, and I basically said we would stipulate to what the plaintiffs are arguing. I didn't have time to put a reply brief together yesterday. I would have, but--

THE COURT: I wouldn't have read it.

MR. WARTELLE: That's why she said don't do it. And, Your Honor, what the defense argued in its reply brief is that -- and which I can't even believe. It's amazing that they would even argue -- that this is not an issue of financial protection -- I think those are the words

-- or loss protection -- financial protection and loss distribution. They said that's not the issue. Your Honor, that is exactly the issue here, which is whether they are going to be the statutory employer and whether they are going to have the protection or the loss distribution, who is going to suffer the loss and the financial protection of Mr. Plaintiff. That is the issue. Therefore, that Code article applies.

There are some other things that they said, Your Honor, I want to point out to you because I am just amazed. They said that the work operations for Grey Wolf are in Louisiana. Well, they do have a yard in Duson. What they didn't tell you, Judge, is that Grey Wolf is incorporated in Texas, their offices are in Texas.

THE COURT: I knew that.

MR. WARTELLE: I wasn't sure about that. I just wanted to make sure.

MR. GIBSON: Your Honor, if we didn't put that in the brief, we meant to.

THE COURT: I knew that. I know that.

MR. WARTELLE: I didn't know, Judge.

THE COURT: I knew it. It's in the memorandums.

MR. WARTELLE: Okay.

THE COURT: I don't think that's disputed.

MR. WARTELLE: Okay.

What they are also arguing to you, Your Honor, is because you said something about the issue as to Chandeleur, that the Court is bound by that, that is, "Well, because I'm going to apply

Louisiana law as to Chandeleur, I'm bound by that as to Grey Wolf." And they argue that to do otherwise would result in piecemeal determinations on application of law. Your Honor, I would suggest to you that in the Civil Code, it is mandatory that the Court examine each issue and make a determination as to which law will apply. And there are Louisiana cases on that point, too. Depending on the issue, the Court can apply the laws of different states.

In the case, as I think I told you earlier, I think the Civil Code is very clear on it.

They argue -- the defense argues that this is not a defense of loss distribution. Your Honor, the Fifth Circuit has already ruled in a couple of cases that in fact the statute that they

are relying upon R.S. 23:1032 and 1061, one of the public policies is the insulation of a principal from third-party liability in some circumstances. So, in fact, Your Honor, that statute does govern financial protection and loss distribution.

Your Honor, one of the -- one of the things that really prompted me to come over here, perhaps more than anything, in their brief -- and this really needs to be cleared up for the Court -- in their brief that they argued that Mansel Carriere, the plaintiff, quote "Settled his worker's compensation claim against Grey Wolf for a substantial sum of money."

Your Honor, what happened is it was litigated bitterly, the worker's comp. claim. Mr. Carriere settled his comp.

claim. Aetna paid him. Aetna had disputed jurisdiction by filing--

THE COURT: So what?

MR. WARTELLE: Because that's an erroneous statement in their brief. And I agree with you, so what? It doesn't really matter whether he settled his comp. claim. I agree. I just wanted to clear that up.

Your Honor, one last thing, and this is -- and this is probably the best way for the Court to decide it if the Court is unsure about the application of the Civil Code article is a matter of public policy. The defendants argue that Louisiana's interest are served by application of Louisiana law, and they say the Louisiana policies of deterrence and repairing consequences are served. Now, those are policies that the Court

should consider.

How is Louisiana's policy of deterring somebody's conduct and using something that's broken, in this case Grey Wolf, how is that served by letting Grey Wolf off the hook as a statutory employer and letting them out the back door? I would suggest to you, Your Honor, that they are right, that is a policy the Court should consider. But in this case, the policy favors application of Texas law, because if the plaintiff is allowed to recovery in tort against Grey Wolf, maybe they will fix their broken equipment, assuming it's broken.

THE COURT: I'm going to have the court reporter transcribe that last statement for the next time you argue on the other side of that issue.

MR. WARTELLE: Your Honor, I know.

These cases have gotten me coming and going depending on where I am. You are right.

THE COURT: This is the first time I have ever heard you argue in that fashion.

MR. WARTELLE: Your Honor, people have heard a lot of strange stuff from me in the last year.

The second public policy consideration that they bring up, and they are right, it is a consideration, is the State's interest in repairing the consequences of what happened. In the words of the defendants, they are right, there really is no conflict, because Louisiana doesn't have an interest in that either, at least in favor of applying its own law, because if their law is applied, the consequences, Mr.

Carriere's damages, will not be repaired. So, the two main policy considerations that they cite, the defense cites deterring negligent conduct and repairing damages, Louisiana's interests are nil, because if you apply Louisiana law, there will be no deterrence and there will be no repair.

Your Honor, I would suggest to you that the interests are served by application of Texas law. Mr. Carriere will be recompensed for his damages, the negligent conduct will hopefully be deterred, and under the literal terms of Article 3543, Section Two of the Code, Texas law will apply, and that's consistent with the public policy considerations as set forth in the advisory notes to the Civil Code articles.

That's it.

THE COURT: Brief response?

MR. GIBSON: Your Honor, I just noticed-- I just noticed, Your Honor, that throughout both of counsel's responses, no one explained how we are going to -- how you get around the fact that Grey Wolf as the statutory employer of Mansel Carriere can be sued in tort. Under the Louisiana Workers Comp Act, you know, the sidetracking over into the choice of law kind of thing is only a way of them trying to ring the bell by--but not having to deal with the real issue of the application of workers' comp. to Mr. Carriere's claim. As an immediate function of the application of that statute, Grey Wolf is determined to be the statutory employer and immune from this suit. No one has been able to

explain how you get around that. Maybe we should get a set of scissors and just sort of cut it out of the green books, that one section that gives statutory immunity. But other than that, you can't do it. Grey Wolf is immune.

Grey Wolf is also, despite what Mr. Wartelle says, out $15,000 to Mr. Carriere that hasn't been reimbursed yet. What does Grey Wolf do? Intervene in this suit against itself? You know, their entitlement to that is granted under the Workers Comp Act that Mr. Cave is collecting the money on right now. They don't address this issue, Your Honor. They want to sidetrack and go over into another area supported with-- If you will not in the brief, Texas comp. law is cited as, you know, the authority to use Texas tort law. And, you know, the whole

rational is flawed, Your Honor. You never get to the choice of law question. The law applicable in the case is Louisiana Workers Comp.

THE COURT: I have to agree with you. I don't think we get to that point. I'm going to grant the Motion for Summary Judgment.

I'll sign a formal order upon presentation.

MR. GIBSON: Thank you, Your Honor

MR. WARTELLE: Thank you, Judge.

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C E R T I F I C A T E

I, Vivian A. Duhe', Official Court Reporter, in and for the United States District Court, do hereby certify that the foregoing 19 pages of typewritten matter constitute a true and correct transcription of my stenographic notes and mechanical recordings in the foregoing entitled cause.

I certify that the transcript fees and the format comply with those prescribed by the Court and Judicial Conference of the United States.

/s/ Vivian A. Duhe'
Vivian A. Duhe'

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

U.S. COURT OF APPEALS
FILED
JAN 17 1995
CHARLES R. FULBRUGE III
CLERK

NO. 94-40119

MANSEL J. CARRIERE and
JANELL L. CARRIERE,

Plaintiffs-Appellants,

and

AETNA CASUALTY & SURETY COMPANY,

Intervenor-Appellant,

versus

CHANDELEUR ENERGY CORPORATION, ET AL.,

Defendants,

and

GREY WOLF DRILLING COMPANY, INC., and
PETROLEUM MARINE INSURANCE COMPANY, INC.,

Defendants-Appellees.

Appeal from the
United States District Court
For the Western District of Louisiana
(CA No. 92-1111 L-O)

ON PETITIONS FOR REHEARING
(January 17, 1995)

Before REYNALDO G. GARZA, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM*:

IT IS ORDERED that Appellants' petitions for rehearing filed in the above case are DENIED.

In denying Appellants' petitions for rehearing we take the opportunity to clarify and correct several points raised in the Petition for Rehearing and

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*Local Rule 47.5 provides: "the publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Certification to the Louisiana Supreme Court.

Appellants challenge the third Louisiana interest found in section B(2)(a) of our opinion in which we state that "Carriere was working for Grey Wolf pursuant to a Louisiana contract for hire." Petitioners' maintain first, that Carriere was actually working for Chandeleur, and second, that Carriere was working pursuant to a Texas contract between Chandeleur and Grey Wolf. This argument misreads the statement. The essential point of the statement is the undisputed fact that Carriere was working pursuant to a Louisiana contract for hire - albeit a contract with his direct employer Chandeleur. This is a substantial Louisiana interest that is reflected by the statement as written.

The fact that Carriere was employed by Chandeleur, while actually working for Grey Wolf pursuant to the Chandeleur-Grey Wolf contract does not diminish the fact that Carriere was working pursuant to a Louisiana contract for hire.

Appellants note - correctly - that we misspoke, in connection with the fourth Louisiana interest, in stating that Carriere's direct employer (Chandeleur) is domiciled in Louisiana. Chandeleur is not domiciled in Louisiana; and the fact that Chandeleur is a Texas corporation is noted elsewhere in the opinion. The statement should reflect that Chandeleur is authorized to do business in Louisiana, and in fact is doing business in Louisiana as is evidenced by the Louisiana contract for hire between Chandeleur and Carriere.

Our technical error of fact does not defeat the purpose of the statement, however, as the fact that Carriere's direct employer is actually present in Louisiana by virtue of doing business there, as opposed to being legally domiciled in Louisiana, still presents a substantial Louisiana interest that affects the analysis.

Appellants also assert that we failed to consider the "pertinent" fact that the contract between Grey Wolf and Chandeleur stipulated that Texas law would apply. Contrary to the Appellants' assertions, though, we did consider this assertion; we merely chose not to discuss it for reasons that should have been obvious: First, the issue was not raised below so we need not have considered it, even though we did so. Second, the

language of the contract provides that the "legal authority for interpretation of this contract, and the laws governing this transaction are agreed to be the laws of the state of Texas." Clearly this refers to the contract between Chandeleur and Grey Wolf and not the employment contract between Carriere and Chandeleur or the relationship and dispute between Carriere and Grey Wolf. As such, it does not mandate that Texas law is the applicable law for the instant dispute. This contractual choice of law argument is wholly without merit.

Finally, neither the remaining arguments advanced for rehearing, nor the request for certification merit attention. The decision of this panel stands.

ENTERED FOR THE COURT:

/S/
United States Circuit Judge

(2)

No. 94-1695

Supreme Court, U.S.
FILED
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In The

Supreme Court of the United States

October Term, 1994

MANSEL J. CARRIERE, JANELL L. CARRIERE and AETNA CASUALTY & SURETY COMPANY,

Petitioners,

vs.

GREY WOLF DRILLING COMPANY and PETROLEUM MARINE INS. AGENCY, INC.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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APPENDIX

Appendix A — Final Judgment Pursuant to Rule 54(b) .. 1a

SUMMARY OF THE ARGUMENT

The United States Fifth Circuit Court of Appeals, in its review of the decision of the trial court, engaged in a detailed analysis of the respective state interests and policies involved in this conflicts of laws question. In the unpublished opinion, the appellate court found this to be an "exceptional case", and that Louisiana law (the law of the forum state) would be "most seriously impaired" if Texas law were applied. The Fifth Circuit further found that application of the rule argued by Petitioner would produce a result incompatible with the principles of Louisiana Civil Code Article 3542.[1]

The Fifth Circuit recognized that Petitioner's claim against his direct employer, Chandeleur Energy Corporation, was properly dismissed on summary judgment by application of Louisiana workers' compensation law. (That judgment was not appealed by Petitioner.) The Fifth Circuit recognized that Petitioner has been, and continues to be, compensated for his injury pursuant to the Louisiana Workers' Compensation Act.

Petitioner's claim against Grey Wolf in this case is based on the same accident. Under the same workers' compensation law that has already compensated the Petitioner for his injury vis-a-vis his direct employer, Respondent, Grey Wolf is immunized

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1. "Except as otherwise provided in this Title, an issue of delictual or quasi-delictual obligations is governed by the law of the state whose policies would be most seriously impaired if its laws were not applied to that issue.

That state is determined by evaluating the strength and pertinence of the relevant policies of the involved states in the light of: (1) the pertinent contacts of each state to the parties and the events giving rise to the dispute, including the place of conduct and injury, the domicile, habitual residence, or place of business of the parties, and the state in which the relationship, if any, between the parties was centered; and (2) the policies referred to in Article 3515, as well as the policies of deterring wrongful conduct and of repairing the consequences of injurious acts." La. C. C. Art. 3542

from this tort suit as the Petitioner's statutory employer. In affirming the trial court, the Fifth Circuit properly considered the severely adverse effect the Petitioner's analysis would work on the Louisiana statutory scheme for workers' compensation, the same scheme which has and continues to compensate Carriere for his injury.

Article 14 of the Louisiana Civil Code provides that in multi-state cases, Book IV of the Civil Code regarding conflicts of laws will apply, *unless expressly provided in the law of Louisiana.*[2] Despite Petitioner's focus on sections of Book IV, the express terms of La. R.S. 23:1035.1 expressly apply to this dispute. That statute provides the specific conflict of law provision for workers' compensation claims when the contract of hire was made in Louisiana. Therefore, under Article 14 of the Louisiana Civil Code, La. R.S. 23:1035.1 applies in preference to the Articles of Book IV advocated by Carriere. This was the basis of the trial court's ruling, which was affirmed by the Fifth Circuit Court of Appeals.

In addition to the trial court's rationale on appeal, the Fifth Circuit examined the case under the principles of Book IV of the Civil Code. Under the interest analysis advocated by the Petitioner, the Court of Appeals concluded that Louisiana law clearly applies to the dispute. Further, the Fifth Circuit held that if it would hold that Texas law is applicable to the case,

> "we would not be giving full faith and credit to the policies which [Louisiana] wants to preserve in providing for employer immunity." [3]

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2. "Unless otherwise expressly provided by the law of this state, cases having contacts with other states are governed by the law selected in accordance with the provisions of Book IV of this Code." La. C. C. Art. 14.

3. *Citing Carriere v. C.C. Crane Corp.*, 812 F. Supp. 90, 92 (S.D. Tex. 1992).

The appellate court based the above conclusion on "the recognition that once an injured employee elects to seek and receive workers' compensation benefits under the law of Louisiana, he is bound by its provisions, including specifically the exclusivity provisions discussed in *Carriere v. Crane, supra.*[4]

Grey Wolf also submits that the trial court's January 27, 1993 Judgment, rendered in response to Chandeleur's Motion for Summary Judgrnent, makes specific findings which constitute the "Law of the Case" under applicable federal jurisprudence. That ruling was made in this case regarding the same issues. It has never been appealed by any party and is, therefore, final and definitive. That judgment, under the "Law of the Case" doctrine, is to be applied consistently throughout the remainder of the case. Since that ruling was never appealed, the findings of the trial court were properly applied throughout the remainder of the lawsuit, including Grey Wolf's Motion for Summary Judgment which is at issue now.

The Louisiana jurisprudence, even in lieu of La. R.S. 23:1035.1 provides that the state has a high interest in the protection of workers recruited and hired within its borders. As such, the jurisprudence makes the Louisiana Workers' Compensation Act part of any "contract of hire" executed within the State of Louisiana.[5]

Even under the general residual conflicts provisions of the Louisiana Civil Code, the law of Louisiana was properly applied by the Fifth Circuit to the claims of Mansel Carriere against Grey Wolf Drilling Company. The general Louisiana Civil Code conflicts article, La. C.C. Art. 3515, looks to which state has the

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4. *See,* Opinion of the Fifth Circuit, at page A-27 of Carrier's Petition for Writ of Certiorari.

5. *Harbis v. McWilliams Company,* 119 So. 88 (La. App. 1928).

greatest interest in having its law applied, and takes into account the detrimental effect to any party if more than one state's laws are applied. In this case, the State of Louisiana has the higher interest in having its workers' compensation laws applicable to the claims of one of its citizens who was recruited and hired within its borders. Louisiana has a great interest in insuring that a worker recruited and hired within its borders is paid compensation. The decision of the Fifth Circuit Court of Appeals in this case recognizes these interests.

Further, since the definitive unappealed judgment for Chandeleur (Appendix A, *infra*) applied Louisiana Workers' Compensation Law to the claims of Carriere against Chandeleur Energy Corporation, the application of Texas law to Carriere's claim against Grey Wolf would cause Grey Wolf to lose rights to indemnity for the compensation payments it made directly to Carriere. It would also cause severe impairment of Grey Wolf's rights of contribution and indemnity, and preclude it from proving principal employer fault. Therefore, reversal of the appellate court's affirmance of the summary judgment would result in two inconsistent and irreconcilable judgments on the same issue in the same case.

REASONS FOR DENYING THE WRIT

I.

DECISION OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Carriere and Aetna Casualty & Surety Company challenged the decision of the District Court to apply Louisiana workers' compensation law to the dispute rather than the law of Texas. In its *de novo* review of the District Court's ruling, the Fifth Circuit Court of Appeals concluded that this is an exceptional case, requiring the employment of Article 3547 of the Louisiana Civil

Code. While Carriere and Aetna argue the applicability of Article 3544 of the Civil Code, Article 3547 provides the following:

> The law applicable under Articles 3543-3546 shall not apply if, from the totality of the circumstances of an exceptional case, it is clearly evident under the principles of Article 3542, that the policies of another state would be more seriously impaired than if its law were not applied to the particular issue. In such event, the law of the other state shall apply.[6]

In concluding that the case at bar is an "exceptional case" under Article 3547, the Fifth Circuit found several clear distinctions in the instant case from the case of *Kennington v. H. Blume Johnson, Inc.*,[7] heavily relied upon by Carriere. The Fifth Circuit noted that unlike *Kennington*, the Petitioner in this case is already receiving workers' compensation benefits under the Louisiana Act. Unlike the *Kennington* defendant, Grey Wolf has conclusively met its burden of showing that the Petitioner is entitled to Louisiana benefits. Very importantly, the proof of Carriere's entitlement to Louisiana workers' compensation benefits is included in a previous, final, and definitive adjudication in this case.[8] Carriere has never appealed the judgment dismissing his direct employer from the case, and holding that the Louisiana Workers' Compensation Act is applicable to this dispute. Furthermore, substantial distinctions

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6. La. R.S.C.C. Art. 3547 (West 1994).

7. 632 So. 2d 833 (La. App. 1994), *rev'd on other grounds*, 638 So. 2d 1966 (La. 1994).

8. Appendix A, *infra*.

in the domiciles of the parties were noted between the *Kennington* case and the case at bar.

After being compelled to hold *Kennington* inapplicable to this case, the Fifth Circuit found it necessary to proceed further in the conflicts analysis and employ Article 3547 of the Louisiana Civil Code.

In comparing the policies and interests of both Texas and Louisiana, the appellate court concluded that Louisiana's interests and contacts are clearly greater than those of Texas. Further, the court inescapably concluded that the policies of the State of Louisiana would be most seriously impaired if its laws were not applied to this dispute. In itemizing the strong Louisiana interests in the case, the Fifth Circuit took notice of the fact that both Carriere and his direct employer, Chandeleur, are domiciled in Louisiana. Carriere was working at the time of his accident pursuant to a Louisiana contract for hire, and received workers' compensation benefits for the injury pursuant to Louisiana law. Grey Wolf, Carriere's statutory employer, is actually doing business in Louisiana. Further, the court noted that Louisiana has a strong interest in protecting citizens who are hired in Louisiana, as well as employers doing business in the state. Additional Louisiana interests include protecting foreign corporations in the promotion of commerce and industry. The court acknowledged that Louisiana also has a strong interest in the consistent and comprehensive implementation of its workers' compensation laws, and as articulated by Article 3515 of the Louisiana Civil Code. Further, the policies and needs of the interstate system, including the expectations of the parties and minimization of adverse consequences that might follow from subjecting the party to the law of more than one state, are best served in this dispute by the application of Louisiana law.

In considering Louisiana's policies and interests in light of the acknowledged interests of Texas, namely that the place of

Grey Wolf's incorporation and Carriere's accident is Texas, as well as the interest in deterring wrongful conduct in repairing consequences of injurious acts, the appellate court was clearly compelled to conclude that policies of Louisiana would be most seriously impaired if its laws were not applied to the instant dispute.

The appellate court quite rightly notes that to apply the checklist contained in Article 3544(2) of the Louisiana Civil Code would be to ignore the effect that such a ruling would have on Louisiana workers' compensation law, the very law under which Carriere is receiving benefits. Since he is receiving benefits under the Louisiana Workers' Compensation Act, Carriere is bound to its provisions, including specifically the exclusive remedy provisions of that Act.[9]

In rejecting Carriere's arguments for the application of Texas law to part of the dispute and Louisiana law to still another part, the court recognized that the Petitioner's case is simply a request for "the piecemeal application of different laws to an equally piecemeal attempt to obtain double — or at least overlapping — recovery for the same injury."[10]

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9. La. R.S. 23:1032.A; *see also, Carriere v. C.C. Crane Corporation,* 812 F. Supp. 90, 91 (S.D. Tex 1992) (hereinafter, *"Crane").* In *Crane,* Ronald Carriere, a Louisiana resident, was killed in Texas while working for the defendant, Grey Wolf, a Texas corporation. As a result of Carriere's death, his widow began receiving benefits pursuant to Louisiana workers' compensation laws. Subsequently, Mrs. Carriere filed a claim against Grey Wolf for death benefits under Texas law. The District Court granted Grey Wolf's Motion for Summary Judgment, holding that once Ms. Carriere began receiving Louisiana workers' compensation benefits, she was bound to Louisiana workers' compensation law. As Louisiana law immunized Grey Wolf from civil liability for Carriere's death, the District Court would not permit Mrs. Carriere to sustain a tort action against Grey Wolf based on Texas law. *Id.* at 92.

10. *See* Opinion ofthe Fifth Circuit at page A-33 of Carriere's Petition for Certiorari.

II.

THE PRIOR UNAPPEALED JUDGMENT IS "LAW OF THE CASE".

Originally in this case, the Carriere Petitioners sued both Chandeleur Energy Corporation and Grey Wolf Drilling Company as a result of the alleged work related injuries received by Carriere. Several months before the filing of Grey Wolf's Motion for Summary Judgment, which is the judgment appealed herein, Chandeleur Energy Corporation filed a separate Motion for Summary Judgment in this same lawsuit. In response to that earlier Motion for Summary Judgment filed by Chandeleur Energy Corporation, the trial court entered a Final Judgment pursuant to Rule 54 (b) which has never been appealed. That now final and definitive judgment provides, *inter alia:*

> 1. At all pertinent times Mansel Carriere was employed by Chandeleur Energy Corporation;
>
> 2. Mansel Carriere was first offered employment with Chandeleur Energy Corporation while located in Louisiana;
>
> 3. Mansel Carriere first accepted employment with Chandeleur Energy Corporation while located in Louisiana;
>
> 4. At all pertinent times Mansel Carriere was working for Chandeleur Energy Corporation pursuant to a contract of hire made in Louisiana;
>
> 5. **Mansel Carriere falls within the**

jurisdiction of the workers' compensation laws of the State of Louisiana;

6. Mansel Carriere's sole remedy against Chandeleur Energy Corporation is the recovery of benefits under the workers' compensation laws of the State of Louisiana.

(Appendix A) (emphasis supplied).

Based on this definitive Judgment found within this same case, Grey Wolf submits that the holdings are the "Law of the Case". "Under the doctrine of 'Law of the Case', a decision on an issue of law made by the court at one stage of a case becomes a binding precedent to be followed in successive stages of the same litigation except in unusual circumstances." *Abbadessa v. Moore Business Farms, Inc.*, 987 F.2d 18 (C.A. 1 1993); *see also, Fcc v. Woko Inc.*, 329 U.S. 223, 67 S. Ct. 213, 91 L. Ed. 204 (1946); *United States v. Riviera-Martinez*, 931 F.2d 148, 151 (C.A. 1 1991); *Piazza v. Aponte Rogue*, 909 F.2d 35, 38 (C.A. 1 1990) (cited therein).

That prior Final Judgment went on to hold that Mansel Carriere's claims against Chandeleur Energy Corporation were dismissed pursuant to Chandeleur Energy Corporation's Motion for Summary Judgment.

Those issues, upon the passing of the appellate delays, became the "Law of the Case." Additionally, there has been no change in circumstances which would warrant a change in those particular holdings mentioned hereinabove. Mansel Carriere would still be considered to have been hired through a contract of hire made in Louisiana because that fact is undisputed. As a result of that holding in the judgment, Carriere's claims fall within the jurisdiction of the Workers' compensation laws of the

State of Louisiana. La. R.S. 23:1035.1 (West 1986); La. C.C. Art. 14.

Once the jurisdiction of the Louisiana workers' compensation law attached, all parts of the Act applied to protect Carriere. As the Fifth Circuit recognized, once an employee elects to receive workers' compensation benefits under the workers' compensation law of Louisiana, he is bound to its provisions, including specifically the exclusivity provisions. [11]

The act creates a statutory employment relationship between Grey Wolf and Carriere under the facts herein, and Grey Wolf is thus exposed to providing compensation (as it did). The Act also functions to immunize Grey Wolf from Carriere's tort suit.

The same residual Conflicts of Law Articles which Carriere and Aetna now argue in their briefs were available at the time Chandeleur's Motion for Summary Judgment was filed and

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11. "A. (1)(a) The rights and remedies herein granted to an employee or his dependent on account of an injury, or compensable sickness or disease for which he is entitled to compensation under this Chapter, shall be exclusive of all other rights and remedies of such employee, his personal representatives, dependents, or relations, against his employer, or any principal or any officer, director, stockholder, partner, or employee of such employer or principal, for said injury, or compensable sickness or disease.

(b) This exclusive remedy is exclusive of all claims, including any claims that might arise against his employer, or any principal or any officer, director, stockholder, partner, or employee of such employer or principal under any dual capacity theory or doctrine.

(2) For purposes of this Section, the word "principal" shall be defined as any person who undertakes to execute any work which is a part of his trade, business, or occupation in which he was engaged at the time of the injury, or which he had contracted to perform and contracts with any person for the execution thereof . . ." La. R.S. 23:1032.A.

decided. Yet, Carriere acquiesced in the Judgment and did not appeal. The result of his acquiescence was that he was able to receive compensation for his injury under Louisiana workers' compensation law. Therefore, it is Grey Wolf's contention that Carriere is asking for the issuance of irreconcilable judgments in this case. The first Judgment, which was not appealed, holds that the Louisiana Workers' Compensation Act applies to afford him compensation for his injury. He now requests a second Judgment, holding that the Louisiana Workers' Compensation Act does *not* apply, so that he can obtain *additional* compensation for his injury from Grey Wolf, which is statutorily immune from suit under the *first* Judgment.

In discussing the exceptionality of this case, the Fifth Circuit identified Carriere's attempt to obtain double recovery. In describing its holding, and warning that the Opinion is *not* a blanket protection for foreign corporations under Louisiana law, the court remarked:

> Rather, it is a particularized response to an exceptional case, a response that avoids piecemeal application of different laws to an equally piecemeal attempt to obtain double — or at least overlapping — recovery for the same injury.[12]

The "Law of the Case" doctrine was created specifically for the purpose of defeating the likelihood of inconsistencies which would result if a court made contradicting rulings on identical issues within the exact same case. Of course, *res judicata* and issue preclusion, along with "Law of the Case" are all doctrines which have developed in the federal procedural jurisprudence to

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12. Opinion of the Fifth Circuit, page A-33 of Carriere's Petition for Certiorari.

prevent rehashing identical issues already decided and which have become final. The "Law of the Case" doctrine clearly supports the Judgment of the trial court and Fifth Circuit herein. If for some reason this Honorable Court would be inclined to grant the writ, Grey Wolf submits that the circumstances now are the same as the circumstances existing at the time of the entry of the Chandeleur Judgment. For these reasons, Grey Wolf submits that the Louisiana workers' compensation law applies to the claims of Mansel Carriere herein, and that as a function thereof, it is statutorily immune from Carriere's tort suit.

III.

LA. R. S. 1035.1: THE SPECIFIC LOUISIANA'S WORKERS' COMPENSATION CONFLICTS OF LAWS ARTICLE AND THE EXCLUSIVE REMEDY

Federal courts sitting in diversity are to apply the substantive law of the forum state, including the forum state's conflicts of laws provision. *Klaxon Company v. Stentor Elec. Mfg. Co., Inc.*, 313 U.S. 487, 61 S. Ct. 1020, 85 L. Ed. 1477 (1941); *General Electric Capitol Corp. v. Southern Health Care, Inc.*, 950 F.2d 944 (C.A. 5 1991); *Stein v. Marathon Oil Company*, 976 F.2d 254 (C.A. 5 1992). Therefore, in the instant case, it is clear that the substantive law of Louisiana is to be applied. Carriere and Aetna attempted to support their claims of error by reference to the recently enacted conflicts of laws section found in Louisiana Civil Code, Articles 3515, *et seq.* Counsel for Carriere and Aetna are correct in their assertion that federal courts sitting in diversity are to apply the conflicts laws of the forum state. They fail to mention or further employ the portion of the *Klaxon* rule which requires federal courts sitting in diversity to apply the "substantive law" of the forum state *which includes*, of course, the conflicts of laws principals of the forum state. *Klaxon; General Electric Capitol Corp.; Stein, supra,* herein. In

explaining this rule in *Klaxon, supra,* this Court declared, "And the proper function of the Delaware federal court is to ascertain what the state law is, not what it ought to be." *Klaxon, supra,* at 1022.

The "substantive law" of Louisiana includes Louisiana Revised Statutes, Title 23, the Louisiana's Workers' Compensation Act. The Louisiana Workers' Compensation Act provides its own specific conflicts of law provision, La. R. S. 23:1035.1 (West 1985). It statutorily mandates the extraterritorial application of the Louisiana Workers' Compensation Act as follows:

> If an employee, while working outside the territorial limits of this State, suffers an injury on account of which he, or in the event of his death, his dependents would have been entitled to benefits provided by this chapter had such injury occurred within the State, such employee, or in the event of his death resulting from such injury, his dependents, shall be entitled to the benefits provided by this chapter, provided at the time of such injury
>
> (a) his employment is principally localized in this State, or
>
> (b) *he is working under a contract for hire made in this State.*

(emphasis supplied).[13]

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13. La. R.S. 23:1035.1.

Therefore, pursuant to the foregoing provision, an employee, even if injured outside the State of Louisiana, is protected by, and subject to the Louisiana Workers' Compensation Law if:

> the employee is working under a contract of hire made in Louisiana.

It is undisputed that Mansel Carriere was working under a contract of hire made in Louisiana. Therefore, the Louisiana Workers' Compensation Act applies to afford compensation to him for his injury. La. R.S. 23:1035.1; *Chance v. Fidelity and Casualty Company of New York,* 509 So. 2d 593 (La. App. 3d Cir. 1987); *Jepsom v. B-Con Construction Company Inc.,* 475 So. 2d 112 (La. App. 2d Cir. 1985); *Wilson v. Gulf Insurance Company,* 431 So. 2d 1095 (La. App. 3d Cir. 1983); *Ryder v. Insurance Company of North America,* 282 So. 2d 771 (La. App. 3d Cir. 1973); *Welsh v. Travelers Insurance Company,* 225 So.2d 623 (La. App. 1st Cir. 1969); *Mattel v. Pittman Construction Company,* 180 So. 2d 696 (La. 1965); *Ohlhausen v. Sternberg Dredging Company,* 50 So. 2d 8023 (La. 1951).

Carriere does not dispute the fact that he is covered by the Louisiana Workers' Compensation Act, because he is currently receiving benefits under the Act. He further does not dispute the fact that Grey Wolf is his "statutory employer" under the Workers' Compensation Act, with regard to the exclusive remedy and immunity provision. He simply now argues that he is entitled to double or overlapping coverage under Texas law.

Although the Fifth Circuit extensively discussed the residual Civil Code conflicts provisions, as raised by Aetna and Carriere in their briefs, Grey Wolf submits that the same result was mandated by the specific conflicts provision for Louisiana workers' compensation law, namely La. R. S. 1035.1. In

Louisiana, specific conflicts of law provisions prime the residual Civil Code oonflicts articles. La. Civil Code Art. 14.[14] The trial court made its ruling based upon La. R. S. 23:1035.1, holding that the Louisiana Workers' Compensation Act provides extraterritorial coverage to Mansel Carriere. The same Act provides the exclusive remedy available to Carriere against Grey Wolf.

Clearly, this substantive law of the forum state was given effect, and as function of the statutory employer immunity section of the Act, Grey Wolf's Motion for Summary Judgment was granted and properly affirmed by the Fifth Circuit Court of Appeals.

CONCLUSION

Grey Wolf submits that the Louisiana workers' compensation law applies to this case for several reasons. First, the overriding interests and policies of the State of Louisiana preclude the application of Texas to this case. Secondly, the specific conflicts of laws provision contained in the Louisiana Workers' Compensation Act operates to immunize Grey Wolf from Carriere's suit. Thirdly, under the "Law of the Case" doctrine, the previous final judgment mandates the application of Louisiana law. Fourthly, to apply Texas law to part of the dispute and Louisiana law to another portion would provoke piecemeal application of the laws of two states and result in double or overlapping recovery for the Petitioner. Such double recovery is totally prohibited in the "exclusive remedy" provisions of the Louisiana Act.

Finally, Louisiana's high interest in protecting its workers

14. "Unless otherwise expressly provided by the law of this state, cases having contacts with other states are governed by the law selected in accordance with the provisions of Book IV of this Code." La. Civil Code Art. 14.

which are recruited and hired within its border jurisprudentially attaches the Louisiana Workers' Compensation Act as part of the Louisiana contract of employment.

For all the foregoing reasons, Grey Wolf Drilling Company submits that the United States Fifth Circuit Court of Appeals properly affirmed summary judgment in favor of Grey Wolf Drilling Company and Petroleum Marine Insurance Agency. Accordingly, the writ should be denied.

Respectfully submitted,

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APPENDIX A — FINAL JUDGMENT PURSUANT TO RULE 54(b)

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

LAFAYETTE DIVISION

CIVIL ACTION

NUMBER: 92-1111

JUDGE HAIK

MAGISTRATE TYNES

MANSEL J. CARRIERE and JANELL L. CARRIERE

VERSUS

CHANDELEUR ENERGY CORPORATION and GREY WOLF DRILLING COMPANY

FINAL JUDGMENT PURSUANT TO RULE 54(b)

There came before the Court a Motion for Summary Judgment filed by Chandeleur Energy Corporation. After having reviewed the relevant pleadings, the Court has determined that:

1.

At all pertinent times Mansel Carriere was employed by Chandeleur Energy Corporation;

Appendix A

2.

Mansel Carriere was first offered employment with Chandeleur Energy Corporation while located in Louisiana;

3.

Mansel Carriere first accepted employment with Chandeleur Energy Corporation while located in Louisiana;

4.

At all pertinent times Mansel Carriere was working for Chandeleur Energy Corporation pursuant to a contract of hire made in Louisiana;

5.

Mansel Carriere falls within the jurisdiction of the workers' compensation laws of the State of Louisiana;

6.

Mansel Carriere's sole remedy against Chandeleur Energy Corporation is the recovery of benefits under the workers' compensation laws of the State of Louisiana.

Having made the foregoing findings, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Motion for Summary Judgment filed by Chandeleur Energy Corporation is granted, and the claims of Mansel and Janell Carriere against Chandeleur Energy Corporation are hereby dismissed with prejudice.

Appendix A

The Court expressly determines that there is no just reason for delay and expressly directs the entry of Judgment herein, it being the intent to make this a final judgment pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

THUS DONE AND SIGNED this 27th day of January, 1993 in Lafayette, Louisiana.

Judgment Entered: 2-3-93
By Suzanne Mitchell
Copy To Cave
Adley
Wilkes
Gilison

s/ Haik
UNITED STATES DISTRICT JUDGE